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FIRST DEAN OF THE SCHOOL

By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS

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A treatise on the principles and practic



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TO

SIR JAMES HANNEN,

THE JUDGE OF THE COURT OF PROBATE,

BY

THE AUTHOR.

PREFACE.

THE right of property is the earliest characteristic of civilization, and the next step in progress is the right of directing its disposal after the death of the owner. Although, in respect of real property, some modern nations, as for instance France, have interfered with this right in the supposed interest of the community at large, it is questionable whether such interference is not prejudicial to the very interests it is supposed to favour, by undoubtedly lowering the value of the property meddled with, reducing the estate of each owner, to a certain extent, to a mere life interest. In England, from very early times, the right and freedom of disposal of most kinds of property has existed, and the last traces of restraint have now for some time been removed. The only restriction that the law imposes on the power of willing is, that it should be exercised with certain formalities, and in default of such formalities the law itself, as it were, makes a will for the deceased. The machinery, therefore, which regulates the transmission of property on the decease of the

owner, is obviously one of the most important in the commonwealth, as it would seem, judging from the ordinary duration of human life, that it must deal with the transmission of the entire property of the kingdom in the course of a period between thirty and forty years, unless we except that insignificant portion of real property which passes by heirship. The following work is an attempt to elucidate the principles and practice of the Court which puts in motion and regulates this machinery.

The practice of the Court of Probate is usually divided into two branches, the voluntary or non-contentious, and contentious business; and the statutes and rules recognize this distinction. So far as relates to the statutes and rules the distinction may be easily kept up, but in a work professing to treat of the present procedure of the Court some difficulty arises. For instance, the question whether a will has been sufficiently executed or witnessed may be affected by cases drawn equally from the contentious or non-contentious practice of the Court. The ordinary practice of the Court is, therefore, quite as essential as the contentious procedure. The author has, therefore, limited the latter strictly to those points which are of a merely practical or formal nature, and dealt with the *prin-*

ciples of the Court in the first part of the work. The volume will be found to contain in the Appendices the statutes, rules and forms at present in force. There are also some examples of bills of costs, which, however, are intended more as suggestions than as absolute guides or precedents, as so much must always depend on the particular circumstances of each case.

8 *January*, 1873.

1, ELM COURT,
TEMPLE, E.C.

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Principles and Practice

OF

THE COURT OF PROBATE.

THE COURT.

23 *Origin of.*—At what time, or in what manner the jurisdiction in cases either of testacies or intestacies was originally acquired by the church does not distinctly appear.

Previously, however, to the reign of Edw. I. this jurisdiction had become generally vested in the clergy and usually in the bishop of the diocese where the goods were situate, although, in many cases, it was exercised up to the year 1857 by lords of manors and others. The bishop, being the usual judge in such cases, was, from this circumstance, styled the ordinary, by way of distinction from his extraordinary or peculiar jurisdiction (*a*).

Constitution of.—The court consists of a judge (*b*), or the judge of the High Court of Admiralty (*c*) sitting for him; of three registrars, two record keepers and one sealer for the principal registry; one district (*d*) registrar for each district registry, and clerks and other officers as the judge may think fit (*e*).

(*a*) *Dyke v. Walford*, 5 Moore, P. C. C. 490.

(*c*) Court of Probate Act, 1858, s. 1.

(*b*) Court of Probate Act, 1857, s. 5.

(*d*) *Ibid.* 1857, s. 14.

(*e*) *Ibid.* s. 14.

Districts. The districts are set out in the schedule to the Court of Probate Act, 1857, see Appendix I.

Counsel. Barristers and advocates are equally admitted to practise in the court, and have amongst each other the same precedence as before the Judicial Committee of the Privy Council (*f*).

Under this section it was held that a barrister, who had not been admitted as an advocate, was not entitled to be heard in non-contentious matters (*g*). This disability is now removed (*h*). All motions required to be made before the court must be made by counsel (*i*).

Attorneys, &c. Attorneys and solicitors have the power to practise in the court, and the commissioners for taking oaths in Chancery are also commissioners in this court (*k*); and attorneys and solicitors are subject to the authority of the court as in the equity or common law courts (*l*).

Commissioners.

Jurisdiction of.—The voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of deceased persons now vested in, or which can be exercised by, any court or person in England, together with full authority to hear and determine all questions relating to matters testamentary, shall belong to and be vested in her Majesty, and shall, except as hereinafter is mentioned, be exercised in the name of her Majesty in a court to be called the Court of Probate (*m*). The exception alluded to refers to suits for legacies and the distribution of residues, which were formerly entertained by the ecclesiastical courts, but are expressly exempted from the

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| (<i>f</i>) Court of Probate Act, 1857, | P. & M. 3. |
| s. 40. | (<i>h</i>) Court of Probate Act, 1857, |
| (<i>g</i>) <i>Ludlow, In goods of</i> , 27 L. | s. 45. |
| J., P. & M. 7. | (<i>l</i>) Court of Probate Act, 1858, |
| (<i>h</i>) Court of Probate Act, 1858, | s. 36. |
| s. 2. | (<i>m</i>) Court of Probate Act, 1857, |
| (<i>i</i>) <i>Drake v. Morgan</i> , 27 L. J., | s. 4. |

jurisdiction of the present court (*n*) by the 23rd section of the act.

The Court of Probate shall be a court of record, and such court shall have the same powers, and its grants and orders shall have the same effect, throughout all England, and in relation to the personal estate in all parts of England of deceased persons, as the prerogative court of the Archbishop of Canterbury, and its grants and orders respectively, now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said prerogative court; and all duties which, by statute or otherwise, are imposed on or should be performed by ordinaries generally, or on or by the said prerogative court in respect of probates, administrations, or matters or causes testamentary within their respective jurisdictions, shall be performed by the Court of Probate; provided that no suits for legacies, or suits for the distribution of residues, shall be entertained by the court, or by any court or person whose jurisdiction as to matters and causes testamentary is hereby abolished (*o*). The suits for legacies and distribution of residues is therefore now left entirely to the Court of Chancery, or in some possible cases to the common law courts.

Suits for legacies.

A large proportion of the before-mentioned jurisdiction may be and is exercised without question. A testator may make his will and all parties concerned may acquiesce in his right and capacity to do so, but before the will can be formally approved, it must receive the stamp and authority of the Court of Probate, which has to be judicially satisfied that the will propounded is really a will and the will of the deceased. Of course where no question is raised by anyone, the proceedings are generally easy and simple; such proceedings are called Non-contentious, Common form or

(*n*) Court of Probate Act, 1857, s. 23.

(*o*) Ibid.

Non-contentious
business.

Voluntary, meaning the same thing, and defined to be the business of obtaining probate and administration where there is no contention as to the right thereto (*p*), including the passing of probate and administrations through the Court of Probate in contentious cases where the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration; nevertheless, in these cases questions of difficulty sometimes arise. If such arise in the course of obtaining probate or administration in the principal registry, the registrar may and generally does direct it to be brought before the judge in open court on motion. Should it arise in the country the district registrar is not allowed to decide it himself, but he is directed to "transmit a statement of the matter in question to the registrars (*i. e.* the principal registrars) of the court, who shall obtain the relation of the judge thereto" (*q*).

Contentious
business.

But matters do not always run so smoothly. Disappointed relatives may contest the will propounded, on various grounds, incapacity, undue influence, informal execution, subsequent revocation, &c. &c.; or, if the deceased die intestate, a contest may arise as to whom the letters of administration should be granted. The proceedings taken in such cases are called Contentious business. And so various are the questions thus arising that the statute has not attempted to define them specifically, but has included under this term everything that is not common form, except the warning of caveats. This warning of caveats, therefore, stands in solitary grandeur, and is neither contentious nor common forms, as far as the statute is concerned, though in the rules it is included with non-contentious business (*r*).

The statute imposes on the court the "voluntary and

(*p*) Court of Probate Act, 1857,
s. 2.

(*r*) See statement at commencement of Rules, 1862. Appendix II.

(*q*) Ibid. s. 50.

contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration" (*s*), "together with full authority to hear and determine all questions relating to matters and causes testamentary," except as to the suits for legacies and distribution of residues (*t*).

The question, therefore, arises in what cases the court can exercise its jurisdiction, either to grant probate or administration with the will annexed, if there is a will, or to grant letters of administration if there is not, or to revoke the same when granted; and this depends on the following considerations:—

WILL.

- I. What is a will?
- II. The subject-matter of the estate, *i. e.*, of what it consists.
- III. Where the estate is situate.
- IV. Where the testator or intestate died.
- V. Where the will (if any) was made.

The first and last of these points apply to those cases only where a will exists, or is alleged to exist; the others to cases whether there be a will or not.

I. WHAT IS A WILL?

A testament is defined by Swinburne as follows:—
"testamentum est voluntatis nostræ justa sententia de eo quod quis post mortem suam fieri voluit:" or, as he explains his definition, "a testament is the full purpose of our will touching that which we would have done after our death."

1. It must be "*justa*" as he defines it, "just" meaning lawful, solemn and complete.

2. It must be "*sententia*," the advised purpose or destination of the testator's mind.

(*s*) Court of Probate Act, 1857, s. 4.

(*t*) Ibid. s. 23.

What is a will. 3. It must be *voluntatis nostræ*, “of our free will,” not urged by violence or threats, or misled by fraud.

Lastly, it must be to take effect on our death, “for the testament respecteth that which is to be performed after the death of the testator, and, therefore, so long as he liveth, the testament is of no force; but doth take his strength and is confirmed by the testator’s death” (*u*).

In the course of this work we shall find instances of wills attacked on each of the above grounds, besides those other grounds which have resulted from the requirements of our common law and acts of parliament.

Form.

Form of
document.

An instrument in any form, whether a deed poll or an indenture, if the obvious purpose is not to take place till after the death of the person making it, and till then is revocable, shall operate as a will (*x*).

Where a paper contained a direction to executors under the will of the deceased, it was held to be testamentary on the ground that it was to take effect after death (*y*).

When a paper is not intended as a will, but as an instrument of a different nature, if it cannot operate in the latter, it may in the former character; for the form does not affect its title to probate, provided it is to carry into effect the intention of the deceased after death (*z*).

Forms
entitled.

Where the deceased executed on the same day three indentures, described as deeds of gift, by which he assigned to trustees all his property for the benefit of his three children:—Held, that as it appeared from the contents of such documents, that they were to take effect only on the death of the deceased, they ought to be admitted to probate, as together containing the will of the deceased (*a*).

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|---|---|
| (<i>u</i>) Swinburne, vol. 1, part 1, s. 3. | Lee, 3. |
| (<i>x</i>) <i>Habergham v. Vincent</i> , 2 Ves. jun. 232. | (<i>z</i>) <i>Masterman v. Maberly</i> , 2 Hag. 247. |
| (<i>y</i>) <i>Bagnall v. Downing</i> , 2 | (<i>a</i>) <i>Morgan, In goods of</i> , 35 L. J., P. & M. 98. |

Where the deceased executed in the presence of two witnesses a paper to the effect "I wish my sister to have my savings bank book for her own use;" on the same day she gave her sister the book and authorized her to draw out all the money in the bank, but from some informality, that was not done in the deceased's lifetime:—Held, that from the terms of the paper itself and from the declarations of the deceased at the time she executed it, the court was satisfied that the deceased intended it should operate on her death, and that it must be admitted to probate (*b*).

Forms entitled to probate.

Where B., on his death bed, dictated a writing in the form of a letter, but attested by two witnesses, requesting C., the devisee for life of certain estates under B.'s will, to consent to charge them with 10,000*l.*, to be raised as soon as possible after B.'s death, adding that he knew the request was not legal: the court decreed probate of the paper on motion, in order that the question of construction might be brought before a court of equity (*c*).

Where the deceased, who was a soldier, wrote to his mother, "I have been very successful, and it is now in my power to do what I always desired, that is, to enable you to live comfortably the remainder of your life; as we have been in continual war here, I have made my will, so that if any misfortune should happen to me, besides the one-half of my fortune, which you know who has a right to, I leave you the other, except a few legacies to my brothers and sister:—Held to be testamentary (*d*). This was before the Wills Act, but the principles are the same if the preliminaries as to attestation had been observed; it might also even now be good as the will of a soldier engaged in active service.

So where A., a mariner, by a will duly executed in

(*b*) *Cock v. Cooke*, 36 L. J., P. & M. 5.

deceased, 2 Sw. & Tr. 119; 30 L. J., P. & M. 85.

(*c*) *In the goods of E. Mundy*,

(*d*) *Repington v. Holland*, 2 Lee, 107.

Forms entitled
to probate.

January, 1857, bequeathed to B. a share in the residue of his property, and appointed S. and R. his executors; in November, 1857, being then with his ship at Port Adelaide, he wrote a letter to S., relating to business, which contained the following passage: "Mem.—I desire, if it should please God to take me before I see you again, that you and R. will prevent B. or his children, from ever having a fraction of my property;" on the death of A., Held, that, under 1 Vict. c. 26, s. 11, this letter was entitled to probate as a codicil, though it did not relate exclusively to matters of a testamentary nature (*e*).

If there is proof either in the paper itself, or from clear evidence *dehors*, 1st, that the writer intended to convey the benefits by it, which will be conveyed, if the paper be considered testamentary; 2ndly, that death was the event to give it effect, an instrument, whatever be its form, may be admitted to probate (*f*). And the application of the rules of evidence at common law to the Probate Court, have made no difference in this respect, for the testamentary character of a paper writing may, in the present court, be proved by parol evidence (*g*).

Where the internal defects are supplied by evidence the instrument will be entitled to probate; as where B., having been informed that he could not recover from the illness he then laboured under, expressed a wish that his wife should be in a position to receive at his death certain sums of money in savings banks, and signed, in the presence of witnesses, two orders on a savings bank, to pay to his wife, at any time she might apply for the same, any money; B. died on the following day: the court granted administration with the two orders, as together containing the will of B. annexed, to his widow (*h*).

So where a testator, shortly before his death, executed

(*e*) *Parker, In goods of*, 28 L. J., P. & M. 91.

(*f*) *King's Proctor v. Daines*, 3 Hag. 221.

(*g*) *English, In goods of*, 3 Sw. & Tr. 586; 34 L. J., P. & M. 5.

(*h*) *In the goods of Peter Marsden*, deceased, 1 Sw. & Tr. 542.

a paper which began, "I hereby make a free gift to A. B. of," &c., the court being satisfied that he intended the operation of the paper to be dependent on his death, granted probate of it as a codicil to his will (*i*). Forms entitled to probate.

A married woman, who by her marriage settlement had a power of appointment over certain personal property, executed on the same day two instruments on separate papers:—by the first, she gave all her property to her sister for her sole use from the date thereof; by the second, after referring to the first as a deed of gift and reciting its contents, she expressed her confidence that her sister would fulfil her wishes as to certain specified bequests; immediately after execution, she gave both instruments to her sister, who kept them until after the deceased's death; upon proof that the deceased had always treated these instruments as her will, and that she retained the control over her property until her death, the court admitted them to probate (*k*).

Where a testatrix directed her executors to deliver certain sealed up parcels unopened to certain persons named, the court decreed these parcels to be opened in the presence of the registrar, a schedule to be made of the contents, and to be proved as a codicil (*l*). Of course this could not now be done on account of the operation of the Wills Act.

On the other hand, where a person claims probate of a paper signed and attested, but not on the face of it clearly testamentary, the burden of proof is on that person to satisfy the court that it was executed *animo testandi* (*m*). Forms not entitled to probate.

And where a paper is not dispositive on the face of it, nor shown to be so by extrinsic evidence, it is not entitled to probate (*n*).

(*i*) *Robertson v. Smith*, 39 L. J., P. & M. 41.

(*k*) *Webb, In goods of*, 33 L. J., P. & M. 182.

(*l*) *Pelham v. Newton*, 2 Lee,

(*m*) *Thorncroft and another v. Lashmar*, 2 Sw. & Tr. 479; 31 L. J., P. & M. 150.

(*n*) *Griffin and another v. Ferrard*, 1 Curt. 97.

Forms not entitled to probate.

A testamentary paper not disposing of personalty or appointing executors, but simply appointing a guardian of the testator's children, is not entitled to probate (*p*).

Where a paper is propounded as a codicil, and is not *per se* of a testamentary character, and the internal defect of the instrument is not supplied by evidence, it will be rejected (*q*).

Mere revocation.

It has been held that a mere revocation may be entitled to probate. Thus a codicil, not containing any disposition of property but simply revoking all former wills, was held to be of a testamentary character, and, if proved, to be entitled to probate (*r*). Even though not a codicil; as where on the death of H. his will was found cancelled, and beneath the signature there appeared this memorandum, which was duly executed, "This my last will is hereby cancelled, and as yet I have made no other:" the court admitted the memorandum to proof (*s*).

But these cases, which always seemed questionable, are now virtually overruled, for Lord Penzance has held in a recent case (*t*) that an instrument which disposes of no property, but simply declares an intention to revoke a previous will, is not a will or codicil, and is, therefore, not entitled to probate; "The statute draws a distinction between will and codicils and 'some writing:' I am clearly of opinion that this is 'some writing,' declaring an intention to revoke a previous will, and, being only a writing of that character, cannot be called a will."—Lord Penzance.

Even though the paper appear in the form of a will, yet, if not executed *animo testandi*, it will be set aside (*u*). Again, a duly executed paper, testamentary on the face

(*p*) *Morton, In goods of*, 33 L. J., P. & M. 87.

(*q*) *Coventry v. Williams*, 3 Curt. 787.

(*r*) *Brenchley v. Still*, 2 Roberts. 162.

(*s*) *Hicks, In goods of*, 38 L. J.,

P. & M. 65; see also *Hubbard, In goods of*, 35 L. J., P. & M. 27.

(*t*) *Fraser, In goods of*, 39 L. J., P. & M. 20.

(*u*) *Nicholls v. Nicholls*, 2 Phill. 180.

of it, is not entitled to probate if it is clearly proved, by parol evidence, that it was executed by the deceased without any intention that it should affect the disposition of his property after death; the Court of Probate, however, will not hold itself bound by the verdict of a jury to that effect, but will itself weigh the evidence on which such verdict was founded (x).

Forms not entitled to probate.

The test of the testamentary character of a paper is, Irrevocable. is it revocable? if it is irrevocable it is no testament, as it must, in that case, clearly have an immediate effect, and the essence of a will is, that it is ambulatory during the lifetime of the maker; as where the deceased executed, in the presence of two witnesses, a document called an agreement between himself and his grandson; by this document he agreed to let and the grandson to take on lease certain lands on certain conditions; the agreement contained a clause by which it was directed, that in case the deceased died before the expiration of the lease, the rents should be paid to his executors for the benefit of all his grandchildren, and that, on the termination of the lease, the executors should dispose of the land as therein directed; the deceased never spoke of this document as a will or codicil or testamentary paper:—Held, that inasmuch as this document was not revocable, and was intended to have an immediate operation, it was not testamentary and could not be admitted to probate (y).

Even though the will itself declares that it is irrevocable, it is still revocable; “the reason,” says Swinburne, “is, because the clause derogatory of the power of making testaments, is utterly void in law; nor can a man renounce the power or liberty of making testaments; neither is there any cautel under heaven to prevent this liberty, which also endureth whilst any life endureth” (z).

The rule seems to be, that if a paper purports of itself to

(x) *Lister and others v. Smith*, 3 Sw. & Tw. 282; 33 L. J., P. & M. 29.
 (y) *Robinson, In goods of*, 36 L. J., P. & M. 93.
 (z) Swinb. 504.

Forms not entitled to probate.

be testamentary, the party who opposes its admission to probate must, in order to get rid of it, show to the court that it was not made *animo testandi*; if the purport be equivocal, it must be shown by the party setting it up, that it was made *animo testandi* (a).

Contingent.

A will may be made contingent on an event. Then the non-happening of the event amounts, as it were, to an implied revocation, as where a testator's will commenced, "In case I die before I return from the journey I intend;" this was held a contingent will, and avoided by the testator's return (b).

An unattested letter, purporting to dispose of realty and personalty, and conditional on the deceased's dying during a visit to Ireland, was not admitted to probate in common form (the parties prejudiced being minors), the deceased having returned from Ireland, and having subsequently executed a will attested by three witnesses, disposing of land (purporting to be bequeathed in the letter), and appointing an executrix and guardian of his children, but not referring to the letter nor to his personalty (c).

A will commenced thus:—"This is the last will and testament of me G. T. R., that in case of anything happening to me during the remainder of the voyage, &c., I give and bequeath," &c. Held, that it was a contingent will (d).

Where a testator made a will in case of a contingency, "Should anything happen to me on my passage to Wales or during my stay," and returned to his home safely; the court held that the will was conditional, and the contingency not having occurred, that it was ineffectual (e).

Courts, however, are cautious how they construe conditions of this sort (f).

(a) *Coventry v. Williams*, 3 Curt. 791.

(b) *Parsons v. Lanoe*, Ambl. 557.

(c) *Ward, In goods of*, 4 Hag. Ecc. R. 179.

(d) *Robinson, In goods of*, 40 L. J., P. & M. 16.

(e) *Roberts v. Roberts*, 31 L. J., P. & M. 46.

(f) *Strauss v. Schmidt*, 3 Phill. 217.

As where a will was written eighteen years before the testator's death, containing this passage, "Lest I die before the next sun I make this my last will," the court admitted it to probate, holding the disposition not contingent, and adherence shown by careful preservation (*g*). Forms contingent.

To constitute an adherence since the Wills Act, it must be accompanied by all the formalities required to the due execution of a will (*h*).

A will made in Africa, and commencing, "in the event of my death while serving in this horrid climate, or any accident happening to me, I leave," &c., held, not to be conditional on the death of the deceased happening in Africa (*i*).

After the death of the testator, a will was found amongst his papers, which had been executed two years previously, commencing, "In case of any fatal accident happening to me, being about to travel by railway, I hereby leave all my property," &c.; Held, that the will was not contingent upon the testator's death by accident during the journey he was about to take (*k*).

The deceased, being seriously ill, executed a paper in which he stated that in the event of his death occurring during his illness at A., he wished his property to be disposed of in a certain way; he recovered from his illness, left A., and did not die for twelve months afterwards; Held, that as the circumstances of the case showed that the deceased did not intend that the validity of his will should be conditional on his death at A., it continued operative after he had left that place, and ought to be admitted to probate (*l*).

Where by a marriage settlement made in contemplation of a marriage between A., the intended wife, and B., cer-

(*g*) *Burton v. Collingwood*, 4 P. & M. 131.
 Hag. Ecc. R. 176. (*h*) *Dobson, In goods of*, 36 L. J.,
 (*h*) *Roberts v. Roberts*, 31 L. J., P. & M. 54.
 P. & M. 46. (*l*) *Martin, In goods of*, 36 L. J.,
 (*i*) *Thorne, In goods of*, 34 L. J., P. & M. 116.

Forms contin-
gent.

tain property of A. was vested in trustees in trust for A. till the marriage, and afterwards (subject to certain limitations), in case A. should survive B., in trust for such persons as A. should by will appoint; in July, 1842, the marriage was solemnized, but was void in consequence of A. being the sister of B.'s deceased wife; in October, 1842, A. made her will, whereby, after reciting the power conferred by the settlement, she confirmed it, and, in exercise of the power thereby reserved, and all other powers enabling her in that behalf, directed that the trustees of the settlement for the time being, should hold the property comprised therein, after the death of B., on certain trusts; among others, she gave certain legacies to such of several persons as should be living at the death of B., to be paid within six months after B.'s death, and one moiety of the residue for such persons as B. should appoint, &c.; B. died in the lifetime of A., and on the death of A. letters of administration of her effects were obtained; a suit being afterwards instituted for the purpose of revoking the grant of administration, and obtaining probate of the will: Held, first, that the will was not a contingent will intended by A. to take effect as such only in the event of B. surviving her, though she did not intend by it to dispose of her property until after B.'s death; secondly, that though A. might have supposed her right to make the will, depended on the power conferred by the settlement, yet as she intended to give it in whatever way her right to do so was acquired, and had such a right, the will was entitled to probate (*m*).

Testator in 1858 signed a will, which was not attested, purporting to be conditional upon his non-return from a contemplated journey: after his return from the journey he altered the will in other respects, and it was then formally executed; upon evidence that when the will was executed in 1859 the testator was not contemplating any journey, the court admitted it to probate (*n*).

(*m*) *Southall v. Jones*, 28 L. J.,
P. & M. 112.

(*n*) *Cawthron, In goods of*, 33
L. J., P. & M. 23.

Though a testator cannot delegate to another his power of willing he may depute to another the power of saying whether a paper shall be testamentary or not; for where A. made a will and codicil, and subsequently executed a second codicil, which concluded as follows: "I give my wife the option of adding this codicil to my will or not, as she may think proper or necessary," the widow, who was also sole executrix, having exercised her option by refusing to recognize the validity of the second will, the court decreed probate of the will and first codicil only (*o*).

Forms contingent on assent of a party.

A test for ascertaining whether a will is contingent, is the question whether the disposition of property is dependent upon the happening of some event or calamity referred to in the will, or whether the imminence of such event, or calamity, is merely a reason for making the will, in the former case the will is contingent, in the latter, it is not (*p*).

Contingent, test of.

Two persons may execute a *joint* will, it would seem, to be the will of each, and may be proved as the will of each upon the death of each (*q*). During the period, however, intervening between the deaths of the two parties, it may be set aside by the survivor, so far as it represents his will, otherwise it would be irrevocable during that period, in which case, the instrument would clearly not be the will of the survivor; since, as we have seen before, one test of a will is that it should be revocable during the whole lifetime of the testator.

Joint or mutual wills.

This is, in effect, the decision in *Hobson v. Blackburn* (*r*), for it was there held that mutual or conjoint wills (so styled), irrevocable by either of the supposed testators, are unknown to the testamentary law of this country; what effect soever, may be given to such instrument in equity.

It is clear that the reasoning in that case was based on

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| (<i>o</i>) <i>Smith, In goods of</i> , 38 L. J., | P. & M. 12. |
| P. & M. 85; see also <i>Parsons v. Lanoe</i> , 1 Ves. sen. 190. | (<i>q</i>) <i>Stracey, In goods of</i> , 1 Dea. & Sw. 6. |
| (<i>p</i>) <i>Porter, In goods of</i> , 39 L. J., | (<i>r</i>) 1 Add. 274. |

Forms joint or
mutual.

the ground, that every will, during the lifetime of the maker of it, must be revocable until the moment of his death; and if the paper, during the lifetime of the survivor was irrevocable, it would be no will, but an instrument of another nature, as a compact, or the like (*s*).

A. and B., sisters living together, by a testamentary paper duly executed by both, directed that upon the death of either, whatever remained of their joint savings should go to the survivor, and that at the death of the survivor, whatever remained, as also their furniture, plate, &c. should be divided amongst certain specified persons; upon the death of B., who survived A., the court granted administration with this paper annexed as the will of B. (*t*).

A. and B., partners in a farming business, and joint tenants in certain freeholds, executed a will containing various devises and bequests, to take effect after the decease of both of them; on the death of A., B. surviving, application for probate as of the will of A. was made by the executor therein named:—Held, that probate could not be granted of such an instrument, till after the death of both parties (*u*).

So probate was granted of a joint will of two persons, as a distinct will upon the death of both (*w*).

The court will hold a paper to be testamentary which is in due form and duly executed, without looking at its contents, even though they are manifestly nugatory (*x*).

And where there is no doubt as to the *factum* of a will, which contains no disposition of the residue, the Court of Probate cannot pronounce the deceased to be dead intestate as to the residue (*y*).

(*s*) *Forse and Hambling's case*,
4 Rep. 61; *Vinyor's case*, 8 Rep.
81; Swinb. 504.

(*t*) *Lovegrove, In goods of*, 31
L. J., P. & M. 87.

(*u*) *Raine, In the goods of*, 1 S.
& T. 144.

(*w*) *Stracey, In goods of*, 1 Dea.
& Sw. 6.

(*x*) *Roberts v. Roberts*, 31 L. J.,
P. & M. 46.

(*y*) *Sutton v. Smith and others*,
1 Lee, 275.

Who may make.

The next point that arises in considering what is a will is who may make a will, because, unless the paper propounded is made by a person competent to make a will, it is no *will*, and is not entitled as such to probate.

At the common law the sovereigns of England have Sovereign. no testamentary capacity. "Therefore the will of Henry VIII., by which he professed to dispose of the crown, while it might have regulated the succession of the crown, in so far as it concerned the lands to be granted to the dean and canons of Windsor, had no legal validity or operation" (*y*).—Lord Campbell, C.

By the 39 & 40 Hen. 8, c. 88, s. 4, the king, his heirs 39 & 40
Hen. 8, c. 88,
s. 4. and successors, may by will devise any lands purchased out of the monies issued and applied for the use of his or their privy purse, or with money not appropriated to the public service, or any land come to him or them by devise, descent, or otherwise, from any persons not being kings or queens of this realm. But neither the extinct ecclesiastical courts (*z*) nor the present Court of Probate had or has any authority to inquire into the validity or invalidity of the will of a sovereign of this realm (*a*).

As every person, excepting therefore the sovereign who stands in a peculiar position, is supposed by the law to be capable of making a will, until the contrary appear, the easier method will be to specify those persons who are exceptions to the rule. They may be classed in the following three groups, of which the two first are such as may, or may not, be capable of willing, according to the extent to which their capacities may be affected:—

1. Those whose capacity is defective by nature or circumstances, as lunatics, deaf and dumb, blind, illiterate, Who may not
make. old, drunk, or ignorant of the contents of their wills.

2. Those whose capacity is defective by the act of others,

(*y*) *Att.-Gen. v. Dean and Canons of Windsor*, 30 L. J., Ch. 529.

(*a*) *In the goods of his late Majesty King George III.*, 3 Sw. & Tr. 199.

(*z*) 1 Add. 255.

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as persons acted on by fear, force, importunity, clamour, undue influence, fraud or error.

3. Those whose capacity is taken away by operation of law, as married women, infants, felons, outlaws and alien enemies.

Lunatics.

1. *Constitution defective by Nature or Circumstances.*—

It is not proposed in a practical work to enter into a disquisition on lunacy, a subject which would require a volume to itself, and which, after all, must be decided by the particular facts of each case.

Presumption of sanity.

The presumption that every man is sane until the contrary is proved is not a presumption of law but a presumption of fact, or at the most a mixed presumption of law and fact; the competency of a testator is to be assumed until it is impeached by evidence; but it is not to be assumed as a matter of law that a will is valid as made by a competent testator unless the court or jury, who have to decide upon it, are convinced that he was competent (*b*).

Again, if a will, rational on the face of it, is shown to have been executed and attested in the manner prescribed by law, it is presumed, in the absence of any evidence to the contrary, that it was made by a person of competent understanding; but if there are circumstances in evidence which counterbalance that presumption, the decree of the Court of Probate must be against its validity, unless the evidence on the whole is sufficient to establish affirmatively that the testator was of sound mind when he executed it (*c*). Nevertheless, Sir H. Jenner says, "it is the presumption of law that every man is of sound mind till the contrary is shown" (*d*).

Treatment by friends.

The mere treatment of an alleged lunatic by his relatives is not admissible evidence on the question of his sanity; for where on an issue raising the question whether or not a testator had, during any part of his life, possessed ordi-

(*b*) *Sutton v. Sadler*, 3 C. B., N. & M. 83.

S. 87.

(*d*) *Wellesley v. Vere*, 1 No. of

(*c*) *Symes v. Green*, 28 L. J., P. Ca. 247.

nary powers of understanding, letters were produced in evidence, written at various periods and sent to the testator by persons acquainted with him and since deceased, in which the writers addressed him as an intelligent man:— Held by the King's Bench, and affirmed by the Exchequer Chamber, that such letters were not admissible, unless connected in evidence with some act done by the testator (e). Lunatics—
treatment by
friends.

The court (or jury) must rely but little upon the mere opinion of witnesses, but must look at the grounds upon which those opinions are formed, and be guided in its own judgment by facts proved and by acts done, rather than by the judgment of others (f).

The opinions of medical men are admissible in evidence, not only where they rest on the personal observation of the witness himself, and on facts within his own knowledge, but even where they are merely founded on the case as proved by other witnesses at the trial (g). Opinions of
medical men.

In a criminal trial, where the defence is insanity, a witness of medical skill may be asked whether such and such appearances, proved by other witnesses, are in his judgment symptoms of insanity; but *quære* whether he can be asked whether, from the other testimony given, the act with which the prisoner is charged is in his opinion an act of insanity, which is the very point to be decided by the jury (h).

A commission of lunacy is admissible evidence on the question of the sanity of a testator; the presumption of law is, that the verdict of a jury under a commission of lunacy that the party, the subject of the commission, is of unsound mind, is well founded; and if the commission remain unsuperseded, that the party continued a lunatic at his death; such presumption, however, may be rebutted, and displaced by positive proof of entire recovery, or pos-

(e) *Doe d. Tatham v. Wright*, 7 Ad. & E. 313. (g) Taylor on Evidence, 5th ed. 1231.

(f) *Kinleside v. Harrison*, 2 Phill. 459. (h) *Rex v. Wright*, R. & R. 456.

Lunatics.

Commission de
lunatic.

session of a lucid interval when a testamentary instrument was executed (*i*). It may also be entirely rebutted in its very terms; to an action against executors on a bond of their testator dated July, 1808, on the plea of *non est factum*, they tendered an inquisition taken under a commission against the testator in his lifetime, by which it was found that he had been a lunatic from February, 1808, without any lucid interval: the evidence was admitted, but the plaintiff obtained the verdict (*k*).

Similarly, where a commission in the nature of a writ *de lunatico inquirendo* was issued, and the testator was found in January, 1839, a lunatic, without any lucid interval since 1st August, 1815, a will executed in 1820 was pronounced for (*l*).

The presumption of insanity, says Lord Langdale, from the fact of the inquisition having found a party to be in that state, is a very slight presumption, though sufficient to shift the burthen of proof on those who dispute the insanity (*m*).

Insanity, what
is.

“It has frequently been attempted to lay down some rule of general application to all cases of this kind, but it is found impossible to establish one general rule applicable to all cases, since in each case the question of sanity or insanity must depend upon and be governed by its particular circumstances All these cases, therefore, show that the court must look at the whole circumstances of the case to judge what was the real character of the deceased, with reference, not merely to the particular act, but to all intermediate stages of her life” (*n*).—Sir H. J. Fust.

A sound and disposing mind means a mind of natural capacity, not unduly impaired by old age, or enfeebled by

(*i*) *Prinsep v. Dyce Sombre*, 10 Moo. P. C. C. 232.

Robert. 472.

(*k*) *Faulder v. Silk*, 3 Camp. 125.

(*m*) *Frank v. Frank*, 2 Moo. & Rob. 314, n.

(*l*) *Bannatyne v. Bannatyne*, 2

(*n*) *Mudway v. Croft*, 2 No. of Ca. 442.

illness, or tainted by morbid influence; although delusive ideas and erroneous beliefs may argue mental alienation, they do so, not because they are delusive and erroneous: it is in some cases the degree of their divergence from ordinary sense and reason, and in others the mode in which they exhibit themselves and the forces which they successfully resist for their expulsion, that induce the conclusion of disease; in judging of the sanity of an individual he should be compared in his acts and thoughts with those whom in general temperament and character he resembles; it is not right to compare with an enthusiast one who in daily life has not shown himself to be of that character or temper, nor in scrutinizing his opinions to make such allowances as are found to be necessary in reducing the conception of enthusiasts to the ordinary standard of mankind; if disease be once shown to exist in the mind of the testator, it matters not that the disease be discoverable only on a certain subject, or that on all other subjects the action of the mind is apparently sound and the conduct even prudent: the testator must be pronounced incapable; further, the same result follows, whether or not the particular subjects upon which disease is manifested have any connection with the testamentary disposition before the court (*o*).

Insane delusions are of two kinds: the belief in things impossible; the belief in things possible, but so improbable, under the existing circumstances, that no man of sound mind would give them credit; to which we may add the carrying to an insane extent impressions not in their nature irrational (*p*).

By the law, it is not sufficient that the testator be of memory, when he makes his will, to answer familiar and usual questions, but he ought to have a disposing memory

(*o*) *Smith v. Tebbit*, 36 L. J., P. & M. 97.

(*p*) *Prinsep v. Dyce Sombre*, 10 Moo. P. C. C. 247.

Insanity, what is. so as to be able to make a disposition of his estate with understanding and reason (*q*).

It was agreed by the judges that sane memory for the making of a will is not at all times when the party can answer to anything with sense, but he ought to have judgment to discern, and to be of perfect memory, otherwise the will is void (*r*).

A person who can understand, and answer rationally, questions, may still not be capable of making a will for all purposes: the rule of law is that the competency of the mind must be judged of by the nature of the act to be done, and from a consideration of all the circumstances of the case (*s*).

The clearest and most consistent evidence of capacity and volition are required to support a codicil conveying bequests of such extent as to be irreconcilable with the character of the deceased, and with her intentions, as proved by her affections and former testamentary dispositions; the deceased being at the time within ten days of her death, and in a state of extreme weakness and debility, all her confidential friends excluded or absent, and those only about her who are benefitted under, or engaged in, the preparation or execution of the instrument (*t*).

Partial. Partial insanity is good in defeazance of a will founded immediately (so to be presumed) in or upon such partial insanity; if A., then, make a will plainly inofficious in respect to B., and is proved *at the time of making it* to have been under a morbid delusion as to the character and conduct of B., the Court of Probate will relieve against, by pronouncing this will invalid, and holding A. to have died intestate in law; how sane soever *in other*

(*q*) *Winchester's (Marquis of) case*, 6 Rep. 23.

(*r*) *Combe's case*, Moo. Rep. 759; S. C., 8 Vin. Abr. 43, No. 22.

(*s*) *Marsh v. Tyrrell and another*, 2 Hag. Ecc. Rep. 122.

(*t*) *Brydges v. King*, 1 Hag. Ecc. R. 256.

particulars, or even *generally*, A. at the time in question of making the will may be proved to have been (u). Partial insanity.

“ Cases of what are called incorrectly partial insanity would be better described by the phrase insanity or unsoundness always existing, but only occasionally manifest. . . . If these fancies only affect the party now and then, if for some months he is free from them, labouring under them at other times, then his acts apparently rational would not be regarded as those of a person mentally diseased; but if we are convinced that at the time of doing the acts the delusion continued, and was only latent by reason of the mind not having been pointed to its subject, and would have instantly shown itself, had that subject been presented, then the act is at once regarded as that of a madman”(x). —Lord Brougham.

“ To show unsoundness of mind, it is not required that it should be general; it is sufficient if proved to exist on one or more points, though in other respects the individual may conduct himself with the utmost propriety; 2ndly, provided the delusion or unsoundness of mind is once proved, it is presumed to exist, although not at all times and under all circumstances equally apparent and manifesting itself; 3rdly, where it is proved to have existed, as well before as after a certain period, it will be presumed to have existed at that period, unless satisfactory proof shall be adduced that the mind of the individual had entirely recovered its former state, and had afterwards suffered a relapse; again, in the 4th and last place, it is not necessary the insanity should be apparent on the face of the instrument itself”(y): Sir H. J. Fust.

Accordingly, where a testator, having made his will in June, 1844, in the following month executed a codicil greatly reducing the interest given by the will to a niece, J. D., only next of kin, under an impression that she had

(u) *Dew v. Clark and Clark*, 3 Ca. 390, 391.
 Add. 79. (y) *Fowles v. Davidson*, 6 No. of
 (x) *Waring v. Waring*, 6 No. of Ca. 473.

Partial insanity.

wilfully occasioned the death of his sister during the interval, and made an attempt on his own life in order to get possession of the property left her by the will, and subsequently made two other codicils under the influence of that impression:—Held, that the deceased laboured under an insane delusion *quoad* J. D., and that the codicils having been made under that delusion were invalid (*z*).

Fluctuating.

When the opinions of persons apparently intending to depose fairly are contradictory as to capacity (particularly if facts show the deceased was occasionally capable), the court will infer a fluctuating capacity (*a*).

Lucid interval.

Where the deceased was admitted to have been insane before the execution of two asserted wills, and where there was evidence of delusion and other *indicia* of derangement existing shortly before, as well as subsequent to, the acts, proof of calmness, and of his doing formal matters of business under the sanction of his family, are not sufficient to rebut the presumption against the papers (*b*).

Evidence of the deceased's state of mind is also to be drawn from the instrument itself; for where a person afflicted with habitual insanity, with intermissions, makes a will, the fact that the will is a rational one and made in a rational manner, though not conclusive, is strong evidence of its having been made in a lucid interval (*c*).

“If a person be habitually deranged, but not continually, the mere fact that his will is framed so that no argument of folly or phrenzy can be drawn from it, will raise a presumption that he was sane when he made his will; but to raise that presumption it must be shown that the will emanated from himself. . . . The presumption is carried further, if the will be framed like the will of a natural man, that will raise the presumption that it was made in a lucid interval, although there is no other evi-

(*z*) *Fowles v. Davidson*, 6 No. of Ca. 461.

(*a*) *Williams v. Goude and Bennett*, 1 Hag. Ecc. R. 577.

(*b*) *Groom and another v. Thomas*, 2 Hag. Ecc. R. 433.

(*c*) *Nichols and another v. Binns*, 1 Sw. & Tr. 239.

dence to show he ever had a lucid interval; but if the will is so framed as to draw an argument of folly or phrenzy from it, it will not be presumed to have been made in a lucid interval" (d).—Dr. Radcliff.

The lucid interval must be a substantial though temporary recovery; a mere cessation of the violent symptoms is not enough, there must be a restoration of the mind, sufficient to enable the party soundly to judge of the act (e).

If derangement be alleged, it is clearly incumbent on the party alleging it to prove such derangement; if such derangement be proved, or be admitted to have existed at any particular period, but a lucid interval be alleged to have prevailed at the period particularly referred to, then the burthen of proof attaches on the party alleging such lucid interval . . . the evidence in such a case applying to stated intervals ought to go to the state and habit of the person, and not to the accidental interview of any individual or to the degree of self-possession in any particular act (f).

"The principle in all these cases is, that the *onus probandi* lies upon the party who supports the act of a person who has laboured under insanity" (g).—Sir H. J. Fust.

"It is not disputed that the proof that the deceased was of perfectly sound mind when he did the act, he having been insane at one period, lies upon those who seek to uphold the act, not upon those who impugn it" (h).—Sir H. J. Fust.

"If you can establish that the party afflicted habitually by a malady of the mind has intermissions, and if there was an intermission of the disorder at the time of the act, that being proved is sufficient, and the general habitual

(d) *Walcot v. Alleyne*, 1 Milw. Ir. Ecc. R. 70.

(g) *Johnson v. Blane*, 6 No. of Ca. 457.

(e) *Hull v. Warren*, 9 Ves. 611.

(h) *Grimani v. Draper*, 6 No. of

(f) *Att.-Gen. v. Parnter*, 3 Bro. Ch. C. 443.

Ca. 421.

Lucid interval. insanity will not affect it, but the effect of it is this, it inverts the order of proof and presumption ; for until proof of habitual insanity is made, the presumption is that the party agent, like all human creatures, was rational ; but where an habitual insanity in the mind of the person who does the act is established, then the party who would take advantage of the fact of an interval of reason must prove it " (i).—Sir William Wynne.

But the will of a person subject to lunacy made in a lucid interval is good ; where a testator subject to violent attacks of excitement and to delusions (though not insane or permanent) executed a will and codicil, they were pronounced for, as made in a lucid interval, and not on the face of them sounding in folly (j).

Temporary.

And where the mental disease is in itself of a temporary nature, the presumption of its continuance does not apply, as drunkenness (k), and the like. So where a testator's incapacity, before and after the act done, arises merely from heaviness or stupor, and when there is no delirium, incapacity is not to be inferred in the interval ; the capacity must depend on the changes of the complaint, and the degree of interest prompting exertion (l).

Practice when insanity obvious.

Where a party died insane, leaving a will, which upon the face of it exhibited marks of insanity, the court granted administration of the effects of the deceased, as dead intestate, but directed the will to be deposited in the registry (m).

Mere eccentricity.

" It was a matter of discussion some years ago whether eccentricity amounted to insanity, and it came to this, that eccentricity, by itself, would not amount to insanity, but that eccentricity, coupled with delusion, may constitute

(i) *Cartwright v. Cartwright*, 1 Phill. 100.

(j) *Borlase v. Borlase*, 4 No. of Ca. 106.

(k) *Airey v. Hill*, 2 Add. 209.

(l) *Blake v. Johnson*, Milw. Ir. Ecc. R. 162.

(m) *Bourget, In goods of*, 1 Curt. 591.

unsoundness of mind, and render a party incompetent to do certain acts" (n).—Sir H. J. Fust. Mere eccentricity.

The eccentricity and delusion must be such as irresistibly to overbear reason. Where the deceased was of strange and eccentric habits; had an extraordinary manner of expressing himself; seemed to believe that an aunt of his had been murdered by poison, and that there was in existence a conspiracy to poison himself, and used extraordinary precautions against it: it was held that, though the deceased was eccentric, he was not deranged; that he had not in his mind a morbid delusion *irresistibly overbearing* his reason, and was of testable capacity; and even if deranged, he had on ordinary occasions repeated intervals of reason, in one of which his will was made (o).

It is a most dangerous proceeding for an attorney to take instructions from one of the parties interested without any communication with the testator himself, more particularly where the supposed testator was a person of weak intellect, and where the attorney was not present himself at the time of execution, and it was impossible for him to know whether there had been any communication whatever on the subject of the will with the party making it (p). Weak intellect
—duty of attorney.

"It is an established principle that where the capacity is doubtful at the time of the execution, there must be proof of instructions, or of reading over" (q).—Sir John Nicholl. Knowledge of contents.

"In perfect capacity, knowledge of the contents may be inferred, but where the capacity is weakened and the benefit to the drawer of the will is large, the presumption is weaker, the suspicion is stronger, and the court must be

(n) *Waring v. Waring*, 5 No. of Ca. 308.

(o) *Walcot v. Alleyne*, Milw. Ir. Ecc. R. 65.

(p) *Wallis v. Maugham*, 1 No. of Ca. 534.

(q) *Billingham v. Vickers*, 1 Phill. 193.

Knowledge of
contents.

satisfied of knowledge of the contents beyond the proof of execution by the testator" (r).—Dr. Lushington.

Where the testator is of doubtful capacity, the rule of the court is, that a party propounding an instrument containing a disposition in his own favour, is bound to furnish the court with proof of knowledge of the contents by the deceased, which knowledge may be proved in a variety of ways, by showing an intention to do the act, and that the act is in accordance with previous declarations, or by proof of reading over at the time of execution, or of some reference to the contents by the deceased showing a knowledge of them, or by proof of subsequent recognition. It is not for the court to presume fraud undoubtedly; but some proof of knowledge of the contents must be given in all such cases" (s).—Sir H. J. Fust.

It seems to have been at one time supposed, that a testator could delegate his power of making a will to another, and that his execution of a will so made would be good, although he might be ignorant of its contents (t).

It is now, however, clear that it is essential to the validity of a will that the testator, at the time of its execution, should know and approve of its contents (u).

Where A. sent B. to her attorney to ask him to draw up her will, at the same time saying that he knew her wishes, but giving no further instructions; the attorney, in accordance with the previously expressed wishes of A., and with declarations of her intention, drew up a will leaving all A.'s property to B. and C., who were not related to A.; B. brought back the will and it was executed by A., but it was not previously read over to her, nor were

(r) *Darnell v. Corfield*, 3 No. of Ca. 233.

(s) *Michell v. Thomas*, 5 No. of Ca. 610; affirmed on appeal, ib. 614.

(t) *Middlehurst v. Johnson*, 30

L. J., P. & M. 14; see also obiter dicta in *Cunliffe v. Cross*, 32 L. J., P. & M. 68.

(u) *Hastilow v. Stobie*, 35 L. J., P. & M. 18.

its contents stated to her:—Held, that there was evidence to go to the jury that A. knew and approved the contents of the will, and the jury having so found the court pronounced for the will; the will so made being unsuccessfully opposed by the next of kin, the court, taking into consideration the circumstances under which it was made, that there was evidence of declarations of the testatrix in favour of the next of kin, and that the next of kin had not been allowed by B. and C. to see the testatrix during her last illness, allowed the costs of the next of kin out of the estate (x).

Knowledge of contents.

The burden of proving that a testator knew and approved of the contents of his will lies on the party propounding it (y).

A person who is deaf and dumb may make a will (z).
 “It is essential in law that the instructions should be signified, but it is not essential that they should be signified in words: thus, a person born deaf and dumb, or become deaf and dumb after birth, may convey his meaning by signs” (a).

Deaf and dumb.

But where a testator who was deaf and dumb made his will by communicating his testamentary instructions to an acquaintance by signs and motions, who prepared a will in conformity with such instructions, which was afterwards duly executed by the testator; the court required an affidavit from the drawer of the will, stating the nature of the signs and motions by which the instructions were communicated to him, and ultimately refused to grant probate on motion (b).

And where probate was sought of the will of a testator who was deaf, dumb and illiterate, the court required evidence on affidavit of the signs by which the testator had

(x) *Goodacre v. Smith*, 36 L. J., P. & M. 43.

(a) *Fairtlough v. Fairtlough*, Milw. Ir. Ece. R. 491.

(y) *Cleare v. Cleare*, 38 L. J., P. & M. 81.

(b) *Onston, In goods of*, 2 Sw. & Tr. 461; 31 L. J., P. & M. 177.

(z) Co. Litt. 42 b.

Deaf and dumb.

signified that he understood and approved of the provisions of the will before making the grant (*c*).

Blind.

The rules direct the registrars not to allow probate of the will of blind persons to issue unless they have previously satisfied themselves that the will was read over to the testator before its execution, or that he had at such time knowledge of its contents (*d*). The district registrars are directed when information is deficient on these points to communicate with the principal registry (*e*).

The principle of these rules is the same as that which guided the extinct courts (*f*).

Where the sight had wholly failed and the use of speech was almost lost at the time of execution of a codicil, such portions of it as were proved to have been read to and approved by the testator were decreed for; the remainder being condemned for want of knowledge (*g*).

Illiterate.

As to illiterate persons, they are included in the rules in the same category as the blind; see Rule 71, P. R., and Rule 81, D. R.

Old.

Great age "raises some doubt of capacity, but only so far as to excite the vigilance of the court; for the law allows a person at any age (*h*) to make a will, provided he retains the disposing faculties of his mind" (*i*).

Drunk.

"Intoxication is, in truth, temporary insanity: the brain is incapable of discharging its proper functions, there is temporary mania; but that species of derangement, when the exciting cause is removed, ceases; sobriety brings with it a return of reason" (*k*).—Sir John Nicholl.

Where a testator was proved to have been not properly a madman, but an habitual drunkard, who, under

(*c*) *Geale, In goods of*, 33 L. J., R. 170.
P. & M. 125; 3 S. & Tr. 480.

(*d*) Rule 71, P. R., Non-c.; Rule, 81, D. R.

(*e*) Rule 81, D. R.

(*f*) *Fincham v. Edward*, 3 Curt. 63.

(*g*) *Newton v. Best*, Milw. Ir. Ecc.

(*h*) This must be understood as any age after twenty-one, 1 Vict. c. 26, s. 7.

(*i*) *Kinleside v. Harrison*, 3 Phill. 461.

(*k*) *Wheeler and another v. Alderson*, 3 Hag. Ecc. R. 602.

the excitement of liquor, acted in all respects very like a madman; on it being shown that at the time of making the will the testator was not under the influence of liquor, the will was supported (*l*). Drunk.

2. *Capacity defective by the act of others.*—The party propounding a will must show it is the act of a “free and capable testator.”—Parke, B., in *Barry v. Batlin* (*m*).

Of course if actual force is used the execution of a will, like every other act which presupposes volition, is of itself void. “If it should be demonstrated that actual force was used to compel the party to make the will, there can be no doubt that, although all the formalities required had been complied with, such a will could never stand” (*n*). Force.

But it is not requisite that actual force should be used, and then the cases melt imperceptibly through the different shades of violence, of noise and clamour, of importunity and the like, till they come to be classed under the general head of undue influence.

It cannot be doubted on the one hand that a person, who is barely testable if left to himself, may be of such impaired strength of mind as renders him incapable of offering resistance to designing persons among whom he is thrown; any more than it can be denied on the other hand, that not all kinds of influence, acting on some degree of mental sluggishness or even weakness, will suffice to displace a last will, provided there remain sufficient apprehension of the thing done and there exist a purpose of doing it (*o*). Undue influence, what is.

A pressure of whatever kind, whether it acts on the fears or the hopes of an individual, if so exerted as to overpower the volition, without convincing the judgment, is a species of restraint under which no valid will can be made (*p*).

(*l*) *Airey v. Hill*, 2 Add. 206.

(*m*) 1 Curt. 638.

(*n*) *Mountain v. Bennett*, 1 Cox,

Ch. Ca. 355.

(*o*) *Deare v. Elwyn*, 1 No. of Ca.

344.

(*p*) *Hall v. Hall*, 37 L. J., P. &

M. 40.

Undue influence, what is,

Where there is a great change of disposition and a total departure from former testamentary intentions long adhered to, it is material to examine the probability of the change, especially if, at the time of making the latter disposition, the capacity is doubtful; still more if the person in whose favour the change is made, possessing great influence and authority, originates and conducts the whole transaction (*q*). A person who can understand and answer questions rationally, may still not be capable of making a will for all purposes: the rule of law is that the competency of the mind must be judged of by the nature of the act to be done and from a consideration of all the circumstances of the case (*r*).

Where the will of a married woman (obtained while she was in an extremely weak state, nine days before death, by the active agency of the husband, the sole executor and universal legatee) wholly departed from a former will, deliberately made a few months before, the presumption is strong against the act; and the evidence not being satisfactory, the will was pronounced against, and the husband was condemned in costs (*s*).

Where a will was made by a single old woman of weak mind, though not an idiot or imbecile, in favour of a person with whom she was living, an arbitrary and imperious woman of strong understanding, who had acquired that degree of influence over her which has been found to exist in other cases, and which has on some occasions been ascribed to magic, namely, the power which a strong mind exercises over a weak one: though there might have been communication held with the deceased, which would have enabled her to make a valid will; yet with respect to the will in question their lordships held that Mrs. Rawles (the party with whom deceased lived) *se scripsit hæredem*

(*q*) *Marsh v. Tyrell and Harding*, 2 Hag. Ecc. R. 87.

(*r*) *Ib.* 122.

(*s*) *Myner v. Robinson*, 2 Hag. Ecc. R. 179.

and that there was not sufficient evidence that the deceased was a free agent in the matter (*t*). Undue influence.

On the other hand, the influence to vitiate an act must amount to force and coercion, destroying free agency, and there must be proof that the act was obtained by this coercion (*u*). What is not.

No influence which she may have gained over him, by making herself useful, nay necessary to his existence, or by ingratiating herself through any attractions which she might possess, or by constantly watching his inclinations, or even turning his weaknesses to her account, would be sufficient to displace a will made under the influence of such appliances, provided there existed the discerning understanding and the willing mind (*x*).

If a testator be circumvented by fraud the testament loseth its force (*y*). Fraud, what is.

Under a plea of undue influence, evidence cannot be given that the execution of a will was obtained by the plaintiff instilling into the mind of the deceased, false and delusive notions as to the conduct of the defendants: such evidence is admissible only under a plea of fraud; the court will at the trial allow pleadings to be amended by adding a plea on the terms of adjournment, if desired by the other side, and payment of the costs of the day (*z*).

A false representation respecting the character of an individual to a weak old man, for the purpose of inducing him to revoke a bequest made in favour of the person so calumniated, is a strong instance of fraud (*a*).

Where it appeared that an old and infirm testator, who had bequeathed a legacy to A. B., had been induced, by false and fraudulent representations with reference to the

(*t*) *Cockrofts v. Rawles*, 4 No. of Ca. 237.

(*u*) *Williams v. Gonde and Ben-net*, 1 Hag. Ecc. R. 581.

(*x*) *Ib.*

(*y*) Swinb. Part 1, sect. 3, plac. 32.

(*z*) *White v. White*, 31 L. J., P. & M. 215.

(*a*) *Allen v. M^{rs} Pherson*, 1 H. of L. Ca. 207.

Fraud.

conduct of A. B., made to him for the purpose by C. D., to make a subsequent codicil revoking that legacy and substituting for it a much smaller legacy, the effect of which would be to give a larger share to C. D. than he otherwise would take, the Ecclesiastical Court would not, under such circumstances, grant probate of the revoking codicil (*b*).

Mere evidence of execution of a will and codicil by a person of weak and inert mind, appointing his attorney and agent sole executor and almost universal legatee of a large property, is insufficient without proof of instructions by the deceased, instructions for the will being given to the solicitor who prepared and attested it by and in the handwriting of the executor's father (also the deceased's co-agent and attorney), the codicil being prepared exclusively for his own benefit by the executor, in whose house the deceased was living apart from his family; and other circumstances strongly inferring fraud and circumvention (*c*).

Instructions.

Though instructions are not necessary where the capacity is not doubtful, yet where imposition and custody are suspected, the defect of instructions is extremely material, more especially where the writer (of the will) makes himself executor.—*Per* Sir William Wynne in *Middleton v. Forbes* (*d*).

Error.

Where a married woman makes a will on the erroneous presumption that her husband is dead, and probate of it is granted, the husband, on proof of his identity, is entitled to call in and revoke the grant (*e*).

Testator duly executed two inconsistent wills on the same date, and written on different sides of the same sheet of paper; evidence was admitted to show that the deceased signed one of them only as her will, and signed the other

(*b*) *Butterfield v. Swanen*, quoted in 1 H. of L. Ca. 208.

(*c*) *Ingram v. Wyatt*, 1 Hag. Ecc. R. 384.

(*d*) Cited in *Ingram v. Wyatt*, 1 Hag. Ecc. R. 398.

(*e*) *Bramley v. Haines*, 1 Lee, 120.

by mistake; the court granted probate of the paper signed by the deceased with the intention that it should operate as her will, and not of the other paper (*f*). Error.

In the absence of incapacity, undue influence or fraud, the omission to insert in a will certain legacies for which a testator had given instructions, does not invalidate the will, if at the time of its execution its contents are known to the testator (*g*). Mere omission.

3. *Capacity defective by operation of Law.*] By 34 & 35 Hen. 8, c. 5, s. 14, all wills or testaments made of any manors, lands, tenements or other hereditaments, by any woman covert, shall not be taken to be good or effectual in law. Married women.

By the Wills Act, 7 Will. 4 & 1 Vict. c. 26, s. 8, no will made by any married woman shall be valid, except such as might have been made by a married woman before the passing of that act.

A feme covert, where lands are conveyed to trustees, may have the power of appointing the disposition of such lands held in trust for her after her death, which appointment must be executed like the will of a feme sole (*h*).

A deed of appointment by a feme covert, was held sufficient indication of her intention that property should continue personalty against her heir claiming it, as ineffectually disposed of (*i*).

And where a woman was entitled to the trust of a reversion in fee of lands, and reserved to herself, by articles previous to her marriage, a power of disposing of all her estate to such uses as she should think proper: and she afterwards made an appointment in favour of her husband and children; this appointment was held good, although no conveyance of the reversion was ever executed (*k*).

(*f*) *Nosworthy, In goods of*, 34 Ca. 99.
 L. J., P. & M. 145. (*i*) *Walker v. Deane*, 2 Ves.
 (*g*) *Mitchell v. Gard*, 32 L. J., 169.
 P. & M. 129. (*h*) *Wright v. Lord Cadogan*, 1
 (*h*) *Casson v. Dade*, 1 Bro. Ch. Bro. P. C. 486.

Married
woman.

The meaning of the 8th section of the Wills Act, 1 Vict. c. 26, is that "a married woman shall not make a will disposing of any property, except such property as she was competent to dispose of before the passing of the act" (*m*). —Wood, V.-C.

And a general devise by will, executed after the 1st January, 1838, operates as an execution of a power of appointment vested in the testator after the execution of the will, and the 8th section does not prevent a general devise by a married woman from operating as such an appointment (*n*).

But when the fee simple is conveyed to a feme covert, her power of disposition over it seems gone. For where there was a devise in fee to a feme covert, with a power to dispose of the estate without the control of her husband, it was held, such a power was void, as being inconsistent with the fee given her in the first instance (*o*).

Assent of
husband.

She may make a will by her husband's assent.

Where a married woman, having power to dispose of a fund by will, made a will disposing of that fund and also of another fund over which she had no power, and appointed her husband her executor, and he proved her will generally:—Held, that as to the latter fund the will was valid as being made *ex assensu viri* (*p*).

A married woman made a will appointing executors, and died in the lifetime of her husband, who, by deed, confirmed the will, and consented to the same being proved; the court granted to the executors administration with the will annexed (*q*).

So where by settlement previous to the marriage of A., the income of certain personalty was settled to her separate use for life, with a power to appoint the principal by will; during her lifetime she invested the savings of the pro-

(*m*) *Bernard v. Minshull*, Johns. & P. 192.
297.

(*n*) *Thomas v. Jones*, 31 L. J., 406.
Ch. 732.

(*q*) *Pamela*, In goods of, 31 L.
(*o*) *Goodhill v. Brigham*, 1 Bos. J., P. & M. 158.

perty in stocks and shares in her own name, and died in the lifetime of her husband, having, with his express consent, made a will disposing of all her property, settled and unsettled, and appointing executors; her husband died shortly afterwards, without having revoked his consent; after his death probate of A.'s will was granted to her executors by a district registrar, limited to such property as she had by the settlement power to appoint, and had appointed; the court, with the consent of the personal representative of the husband, revoked the limited probate, and granted general administration, with the will annexed, of her effects to the executors (r).

Married woman.
Husband's assent.

R. S. died on the 19th of January, 1858, two days after her husband's death, leaving a will made during her coverture, which had not been republished after her husband's death; R. S. had no power under any instrument to make a will during coverture; at the time of the death of her husband and herself there was invested in the husband's name, in the 3l. per Cent. Annuities, with monies of his, a sum of money which had always been treated by the husband and wife as her separate property, the same being the savings of the wife of presents made to her by her husband; by his will the husband declared that the said sum was the sole property of his wife:—Held, that the said monies were the separate estate of the wife, her husband being, as to them, a trustee for her, and consequently might be disposed of by a will made during her coverture; but that, as she survived her husband, probate should be granted limited to such property as she had power to dispose of (s).

Republication after husband's death.

If a married woman make a will, even with the consent of her husband, and survives him, it must be republished to become entitled to a general probate. For where by ante-nuptial settlement personalty was settled in trust for A., the intended wife, if she should survive her husband,

(r) *Reay, In goods of*, 31 L. J., P. & M. 154.

(s) *Smith, In goods of*, 1 Sw. & Tr. 125.

Married
woman.

and in case she should die in his lifetime, in trust for such person or persons and for such intents and purposes as she, notwithstanding her coverture, should by will appoint: A., in the lifetime of her husband, duly executed a will, purporting to be in exercise of the power given by the settlement, and of every other power enabling her in that behalf: she survived her husband, and died without having republished her will: the court refused upon motion to grant general probate (*t*).

Living separate.

In 1817 a husband and wife verbally agreed that they would divide their furniture and effects and live separate; that the wife should maintain herself, and that the husband should allow her to enjoy her earnings for her separate use, and that neither should interfere with the other: in pursuance of this agreement they divided their effects and separated; the wife engaged in business and died in 1856, leaving a will, bequeathing money which she had acquired in her business since the separation: in a suit instituted for a grant of administration against the executors named in the wife's will, an allegation was given in by the latter, pleading the above facts: the admission of this allegation being opposed, it was held to be admissible, inasmuch as, under the circumstances stated in it, the property acquired by the wife after the separation became her separate property, and as such might be bequeathed by her (*u*). See now also the Married Women's Property Act, 1870.

A Frenchman and an Englishwoman, in anticipation of a marriage which was afterwards celebrated between them in France, entered into a contract, one of the conditions of which was, that the survivor should enjoy the usufruct of one-half of the goods of the predeceased: subsequently a separation was decreed between the parties by the proper tribunal of the country of their then domicile: the wife, being resident in this country, executed a will in accordance with the law of this country, by which she disposed of the

(*t*) *Wollaston, In goods of*, 32 L. J., P. & M. 171.

(*u*) *Haddon v. Fludbury*, 27 L. J., P. & M. 21.

whole of her property: the husband was still living:— Married
Held, that the court could decree probate of such will, woman.
but limited to such property as the deceased had a right
to dispose of (*w*).

The wife of a convicted felon is a feme sole as to her Wife of felon.
testamentary capacity, and a will made by her, whilst her
husband is undergoing his sentence, is therefore entitled to
probate (*x*).

“That no will made by any person under the age of Infant.
twenty-one years shall be valid” (*y*).

This section annuls all wills made by persons under age
from the time of their being made (*z*). As, however, the
statute does not extend to wills made before 1838, such
wills would be now good, provided the infant was, if a
male, above the age of fourteen, and, if a female, of twelve
years. With respect, however, to a devise of *lands*, in-
fants were *intestable*, previous to 1838, by the Statute of
Wills (*a*).

A felon may make a will; for the executor of the will Felon.
of a person found *felo de se* by the verdict of a coroner's
inquest, is entitled to probate thereof, though the effect of
the verdict is to work a forfeiture of the personal property
of the deceased to the crown; for there is a distinction
between the operative effect of a testamentary paper and
its title to probate (*b*).

And where a coroner's inquest having found a man
felo de se, his executors moved that they might traverse
the inquisition, which was granted (*c*).

Although, therefore, the felony may work a forfeiture
of the goods and chattels of the deceased felon, so as to
prevent the will operating upon them, yet, where a felon

(*w*) *D'Etrevè de Pradel, In goods*
of, 37 L. J., P. & M. 2.

(*x*) *In goods of Coward, de-*
ceased, 34 L. J., P. M. & A. 120.

(*y*) 1 Vict. c. 26, s. 7.

(*z*) *Thomas v. Jones*, 2 Johns. &
H. 475.

(*a*) 34 & 35 Hen. 8, c. 5, s. 14.

(*b*) *Baily, In goods of*, 2 Sw. &
Tr. 156; 31 L. J., P. & M. 178.

(*c*) *R. v. Aldenham*, 2 Lev. 152,

Felon.

is executor of a previous testator, or entitled to trust property, which is unaffected by the forfeiture, probate or administration may become necessary, and the character of executor or administrator to a deceased felon has been recognized in the Courts of Chancery (*d*).

So also a felon may make a devise of his lands, for they are not subjected to any forfeiture (*e*).

But the necessity for this branch of the subject, seems almost put an end to by the recent statute, which abolishes forfeiture in cases of felony (*f*); and as much of the intricacy of the old law seems to have arisen from a confusion between the power of making a will and the power of dealing with the property over which the will operates, this distinction is now set at rest.

Outlaw.

Outlaws also, though it be but for debt, are incapable of making a will so long as the outlawry subsists, for their goods and chattels are forfeited during that time (*g*). This however seems, as in the case of felons, to be rather an objection to the will operating on the deceased's goods and chattels, than to its being made or proved: and it seems that "he who is outlawed in an action personal may make his testament of his lands, for they are not forfeited" (*h*). He may also be an executor or trustee, in which case the trust property, it is conceived, in his character of executor, might pass by will.

Aliens.

Alien friends may make wills to dispose of their personal estate, but alien enemies, unless they have the licence of the crown, express or implied, to reside in this country, are incapable of making any testamentary disposition of their property (*i*).

Any document propounded will be refused probate, if it be shown that the alleged testator was incapacitated from making his will on any of the grounds above specified.

(*d*) *Sir William Darcy's case*, 1 Freeman's R. in Ch. 23.

(*e*) 3 Inst. 55; 4 Burn, Ecc. L. 62.

(*f*) 33 & 34 Vict. c. 23, s. 1.

(*g*) 2 Bla. Com. 499; Godolph. c. 12, s. 8.

(*h*) Swinb. part 2, s. 21, pl. 7.

(*i*) 2 Wms. on Executors, 1.

II. THE SUBJECT-MATTER.

Again, a will may also be refused probate on the ground of its subject-matter.

As the power of the ordinaries only extended over the Realty. personalty of deceased persons, so the jurisdiction of the Court of Probate is similarly circumscribed; for it has been held that the Ecclesiastical Court acts without jurisdiction in granting probate of an instrument which does not affect the personal estate (*j*).

This was under the jurisdiction of the extinct courts, but the law is still the same (*k*).

Wills only concerning goods and chattels were under the cognizance and direction of the ecclesiastical law (*l*), and, therefore, under that of the present court: similarly the probate of testaments concerning land only, and no goods contained therein, ought not to be in the Spiritual Court; and if there be a suit to compel to have the probate of such testaments, a prohibition lieth (*m*).

The court has no jurisdiction under 20 & 21 Vict. c. 77, s. 61, to determine the validity of a will in respect of realty, unless the same will which regulates the disposition of the personalty also regulates that of the realty. A domiciled Scotchman, entitled to personalty and also to realty in England, executed a will and two codicils affecting realty, all valid by the law of Scotland, but the will only valid by the law of England: the executors propounded this will and codicils, and cited the co-heiresses at law to see proceedings:—Held that, as the disposition of the realty in England was regulated by the will only, and that of the personalty by the will and codicils, this court had

Wills affecting
realty and
personalty.

(*j*) *Habingham v. Vincent*, 2 Ves. jun. 230.

(*l*) *Gibs.* 463.

(*m*) *Netter v. Brett*, Cro. Car.

(*k*) *Drummond, In goods of*, 2 Sw. & Tr. 8.

396; *Anon.*, 3 Salk. 22.

Realty.

no jurisdiction to make a decree binding on the realty in England (*n*).

But the court will grant probate of a will which disposes of realty only, if an executor be appointed therein, even though such executor renounces his rights under it (*o*).

Will under power.

The executors named in a will, which disposes only of realty, are generally entitled to probate: if, however, such a will be made in execution of a power, they are not entitled to probate, as, in that case, their authority is only co-extensive with the power given by the will, and they take nothing *jure representationis* (*p*). On perusing the facts of this case, however, the marginal note scarcely bears out the broad statement with which it commences, and seems only to go to the length of showing that where an original appointment of executors is sufficient to prevent an intestacy as to any part of the property, that their non-renunciation or non-appearance to a citation would not operate so as to cause an intestacy.

Where executors are appointed by will under a power their authority is only co-extensive with the power given by the will, and they take nothing *jure representationis*: therefore, as to all property not disposed of under the power, the deceased dies intestate (*q*).

The executor is the representative of the deceased only so far as a deceased is entitled to be represented: therefore where a party (as a feme covert) is under a general disability, but by virtue of some instrument has a particular power to make a will, a will so made is only co-extensive with the power, and executors so appointed are executors only of the estate over which the power extends. Where A., a married woman, made a will in 1848 in execution of a power of appointment, and in 1857 made another in exe-

(*n*) *Campbell v. Lucy*, 40 L. J., P. & M. 22.

(*p*) *O'Dwyer v. Geere and others*, 29 L. J., P. & M. 47.

(*o*) *Jordan, In goods of*, 37 L. J., P. & M. 22.

(*q*) *Tugman v. Hopkins*, 4 M. & G. 400.

cution of another power of appointment: the later will contained a general revocatory clause, but it did not refer to the will of 1848, or to the power in execution of which it was made, or to the property thereby appointed:—Held, that the will of 1848 was not revoked (*r*). Will under power.

And where the will of A., by which he exercised a power of appointment and also disposed of his own personal estate, having been, as to his own estate, revoked by his subsequent marriage, the court granted administration of his effects, save as to such of them as he was entitled to appoint by will (*s*).

Neither did the ordinary take everything, even of the personalty of a deceased; by the common law, and by particular statutes, there are certain exceptions. Property excepted.

Heirlooms. These are defined to be such goods and chattels as, contrary to the nature of chattels, shall go by special custom to the heir along with the inheritance, and not to the executor of the last proprietor (*t*): such as deer in a real authorized park, fishes in a pond, doves in a dove-house, &c., charters, deeds and other evidences of the land (*u*), together with the chests in which they are contained (though it seems the chest should be sealed) (*x*). Also, by special custom in some places, carriages, utensils and other household implements may be heirlooms (*y*), but the custom must be strictly proved. Monuments and tombstones in churches (*z*) are heirlooms, though the owner of an heirloom may sell or dispose of it during his life, yet it seems he cannot devise them (*a*). Heirlooms.

Payments without Grant.] The following payments also may be made to persons legally entitled on the death

(*r*) *In the goods of Hannah Joys, deceased*, 30 L. J., P. M. & A. 169.

(*s*) *In the goods of George Mason*, 30 L. J., P. & M. 168.

(*t*) 3 Bla. Com. 427 (21st ed.).

(*u*) *Atkinson v. Baker*, 4 T. R. 229.

(*w*) Plowd. 323; Bro. Abr. Chattels, 18.

(*y*) Co. Litt. 18, 185.

(*z*) *Spooner v. Brenster*, 3 Bing. 136.

(*a*) 1 Williams on Executors, 565, 3rd ed.

Payments to be made without grant.

Seamen, deceased officers of navy or marines.

Merchant seaman, effects under 50*l*.

Seamen depositors.

Soldiers. Pension, prize-money or pay up to 100*l*.

of another, without such persons actually taking out probate or administration :—

Payments of pay, half-pay, pension or allowance of deceased officers of the navy and marines, and of widows' pensions and allowances from the compassionate fund not exceeding 32*l*.; prize-money similarly due and not exceeding 20*l*.; these payments are made under a certificate, which is described in the act (*b*).

Payments by the Board of Trade of the money, effects, or money received for effects sold (if not exceeding in value 50*l*.), to the widow, children (or party legally entitled) of any deceased seaman or apprentice (*c*). And where a merchant seaman or apprentice dies, leaving a will not executed according to the forms required by that statute, the wages and effects of the deceased are to be dealt with by the Board of Trade as if no will had been made (*d*).

Similarly all sums due to the estate of any deceased, who is entitled to any deposit in any of the savings banks for seamen, established by the 19 & 20 Vict. c. 41, shall be paid and applied by the Board of Trade in the same manner as the money and effects of a deceased seaman (*e*).

The Chelsea Hospital Commissioners, or the Secretary at War, may pay to persons (who prove themselves next of kin, legal representative, or otherwise legally entitled) any pension, prize-money or pay due to any deceased officer, non-commissioned officer, private or pensioner, provided it does not exceed 50*l*., although the applicant has not taken out administration or probate (*f*). This is extended now to 100*l*. (*g*). Pension or prize-money is paid by the Commissioners of the Chelsea Hospital, and pay by the Secretary at War.

With respect to prize-money, the payment is further

(*b*) 2 & 3 Will. 4, c. 40, s. 12 (re-citing 11 Geo. 4, c. 20, s. 69).

(*c*) 17 & 18 Vict. c. 104, s. 199.

(*d*) *Ib.* sect. 200.

(*e*) 19 & 20 Vict. c. 41, s. 5.

(*f*) 11 Geo. 4 & 1 Will. 4, c. 41,

s. 5.

(*g*) 31 & 32 Vict. c. 90, s. 2.

facilitated by the 2 & 3 Will. 4, which allows the applicant Soldiers, &c. to prove himself, to the satisfaction of the Commissioners of Chelsea Hospital, or their treasurer or deputy-treasurer, to be next of kin, legal representative, or otherwise entitled to any share of the prize-money belonging to a deceased officer, soldier or other person (*g*).

Where a claim is made for prize-money by the next of Foreign soldiers in British service. kin of foreigners who have been in the British service as non-commissioned officers or soldiers and have died intestate, the treasurer or deputy-treasurer of Chelsea Hospital (where such next of kin reside abroad) is authorized to pay such claim to such next of kin, or some person duly authorized by such next of kin, without requiring the production of letters of administration, or if such foreign non-commissioned officer or soldier die, leaving a will, the treasurer or deputy-treasurer is to pay the person, who by inspection of the original will or an authenticated copy appear to be entitled, without requiring probate (*h*).

Where a depositor in a savings bank dies, leaving a deposit in the bank not exceeding 50*l.*, exclusive of interest, Savings bank depositor not exceeding 50*l.* the trustees or managers of the institution may pay the same to the widow or the persons entitled according to the Statute of Distributions or the rules of the institution, unless within a month from the death of the deceased probate of the will of the deceased is produced, or notice in writing of a will and the intention to prove it or to take out letters of administration is given to the trustees or managers, and in the latter case, unless such will is proved, or such letters of administration taken out, within two months from the death of the depositor. And such payment is valid as between the trustees or manager and any other person, but not as between the party receiving the money and another who can show a better title (*i*). And if the deceased be Illegitimate depositor. illegitimate, the trustees and manager may, with the written authority of the barrister appointed to certify the savings

(*g*) 2 & 3 Will. 4, c. 53, s. 25.

(*i*) 7 & 8 Vict. c. 83, s. 10.

(*h*) *Ib.* sect. 26.

Illegitimate
depositor.

bank rules, pay over the deposit to any one or more of the persons who in their opinion would have been entitled if the depositor had been legitimate (*h*).

These regulations are extended to deposits of savings at the general post office (*l*).

Member of
loan or friendly
society.

Similarly trustees of any certified loan society or friendly society or certified branch, or of any friendly society already established, may pay to the widower or widow or child (if so directed by the rules of the society) of any deceased member whatever may be due, if not exceeding 50*l.*, if the trustees are satisfied that the deceased left no will or that no letters of administration will be taken out without probate or letters of administration. If the rules of the society contain no direction as to whom the money should be paid, the trustees are to pay it according to the Statute of Distributions (*m*).

Civil
servants.

Similarly under 31 & 32 Vict. c. 90, the treasury and such departments may, on the death of persons in the civil service entitled to sums under 100*l.*, direct payment thereof without production of letters of administration (*n*); and the enactments previously in force as to the powers of the war department are extended to the limit of 100*l.* (*o*), and the payments are made good as against persons claiming and the office, &c. indemnified (*p*).

III. WHERE THE ESTATE IS SITUATE.

As to the locality of assets, it has been "established as law that judgment debts were assets for the purposes of jurisdiction, where the judgment is recorded; leases, where the land lies; specialty debts, where the instrument happens to be, and simple contract debts where the *debtor* resides, at the time of the testator's death; and it was also decided that as bills of exchange and promissory notes do not alter

(*h*) 7 & 8 Vict. c. 83, s. 11.

(*n*) Sect. 1.

(*l*) 24 Vict. c. 14, s. 14.

(*o*) Sect. 2.

(*m*) 3 & 4 Vict. c. 110, s. 11; and
18 & 19 Vict. c. 63, s. 31.

(*p*) Sect. 3.

the nature of the simple contract debts, but are merely evidences of title, the debts due on these instruments were assets where the debtor lived, and not where the instrument was found" (*g*).—Lord Abinger, C. B.

The court has, as a general rule, no jurisdiction to grant letters of administration, unless the deceased leaves personal property in this country (*r*).

And where it appears, on the papers before the court, that the only property of which a person died possessed is not in this country, the court will decline to grant administration of the goods of the deceased (*s*).

Similarly a will disposing only of property in a foreign country is not entitled to probate in this country (*t*).

Where the deceased, a married woman, died intestate in France, leaving personal property there, but none in this country; her husband, who survived her, was by the law of France unable to obtain possession of the deceased's property without first obtaining letters of administration in England:—Held, that, as the deceased left no personal property in England, the court had no jurisdiction to grant to her husband administration, limited to the purpose of substantiating in France his title to the property there situate (*u*).

And the court has, on several occasions, refused to grant probate of the will, or letters of administration of the estate, of a person who died resident abroad, where it did not appear, on the affidavits on which the application was made, that the deceased left personal property in this country, until an affidavit to that effect was filed (*x*).

But it is otherwise if the deceased were domiciled in England at the time of his death; for as personal property, Law of domicil.

(*g*) *Att.-Gen. v. Bouvens*, 4 M. & W. 191.

(*r*) *Evans v. Burrell*, 28 L. J., P. & M. 82.

(*s*) *In goods of Fittock*, 32 L. J., P. & M. 157.

(*t*) *In goods of Coode*, 1 L. R., P. 449; 36 L. J., P. & M. 129.

(*u*) *Tucker, in goods of*, 34 L. J., P. & M. 29.

(*x*) 28 L. J., P. & M. 83; see note (1).

Locality of estate.

wherever situate, follows the person, the court will grant probate of a document, though it purports to deal only with property out of its jurisdiction (*y*).

A., resident but not domiciled in France, makes a testamentary paper relating to personalty in France and to personalty and realty in England, and a second paper solely relating to personalty in France and disposing of the whole of it to a woman with whom he cohabited, but appoints no executor in either paper, nor residuary legatee nor devisee of his property in England,—his widow is entitled to administration with both papers annexed (*z*).

Where a testator dies leaving no estate in England, it is not necessary that the will should be proved here (*a*).

But according to the usual practice among civilized nations, called the comity of nations, each country can only recognize the officers of its own tribunals; therefore, if a party, having obtained probate from a foreign court, seeks to appear in an English tribunal in the character of an executor or administrator, he must first clothe himself with that character by proving the will in England (*b*).

Indian.

Where the widow of an officer, who died intestate in India, obtained letters of administration of her husband's effects there, and remitted the proceeds thereof in government bills to her agent in England, and a creditor of the intestate took out letters of administration of the intestate's effects in this country, and brought an action against the widow's agent for money in his hands as part of such effects:—Held, that the letters of administration in India prevailed over those granted in this country, and that the action would lie only at the suit of the widow as administratrix (*c*).

(*y*) *Winter, In goods of*, 30 L. 397; 11 Vin. Abr. 59, 69.

J., P. & M. 56.

(*b*) *Att.-Gen. v. Cockerell*, 1 Price,

(*z*) *Spratt v. Harris*, 4 Hag. Ecc. R. 405.

179; *Tyer v. Bell*, 2 Myl. & Cr. 89.

(*c*) *Currie v. Bircham*, 1 Dow.

(*a*) *Jauncey v. Pealey*, 1 Vern. & Ry. 35.

IV. WHERE THE TESTATOR OR INTESTATE DIED.

"It is not fully decided whether this court is bound in all cases, and under all circumstances, to follow the grant of probate made by a court of competent jurisdiction" — Sir John Nicholl. Therefore where the court at Madras had granted probate of an informal paper to the widow, as "universal legatee and constructive executrix," under the circumstances the Ecclesiastical Court here allowed administration with the paper annexed, to pass to her as "relict and principal legatee" (*d*). Place of testator's death.

This seems now however pretty clearly decided, for the judgment of the court of the domicile of a deceased party, at the time of death, is binding on the court of a foreign country, in all questions as to the succession and title to personal property, whether under testacy or intestacy, where the same questions between the same parties are in issue in the foreign court, which have been decided by the court of the domicile (*e*).

"Beyond all possibility of question, the administration of the personal estate of a deceased person, belongs to the court of the country where the deceased was domiciled at his death: all questions of testacy and intestacy, belong to the judge of the domicile; it is the right and duty of that judge to constitute the personal representatives of the deceased: to the court of the domicile belongs the interpretation and construction of the will of the testator; to determine who are the next of kin or heirs of the personal estate of the testator, is the prerogative of the judge of the domicile; in short the court of the domicile is the *forum concursus* to which the legatees under the will of a testator or the parties entitled to the distribution of the estate of an intestate, are required to resort" (*f*).—Lord Westbury. Will to be proved in court of domicile.

(*d*) *In goods of Read*, 1 Hag. Ecc. 301; 35 L. J., P. & M. 129.

R. 474. (*f*) *Enohin v. Wylie and others*,

(*e*) *Crispin v. Doglioni*, 3 Sw. 10 H. of L. Ca. 13.

& Tr. 96; affirmed, 1 L. R., H. of L.

B.

E

Law of
domicil.

Testator, a Spaniard, died at Bilboa in Spain: on the day of his death he caused a document to be prepared by a notary, purporting to give authority to his wife to make a will on his behalf; in pursuance of this authority, she made a will on his behalf after his decease, and appointed herself executrix; the court, being satisfied from the affidavit of a Spanish advocate, that such a will was valid according to the law of Spain, decreed probate (*h*).

The deceased and her husband had their domicil at the Cape of Good Hope, and, in accordance with the laws of that colony, previous to their marriage, they executed a deed of non-community of property, and such deed was duly registered; the Court of Probate granted administration to the brother and next of kin of the deceased, to the exclusion, and without the citation, of the husband (*i*).

Law of *one*
country only
regarded.

But the court can have regard to the law of *one* country only at a time; as where testator made a will in India and added a codicil at Florence; they were not witnessed and were invalid both by the law of England and Italy; he wrote on the back of the will at Genoa a second codicil, which was also not witnessed, but which was well executed, though not valid, according to the law of Italy:—Held that in determining the question whether a paper is valid as a testamentary instrument under 24 & 25 Vict. c. 114, the court can have regard to the law of one country only at a time; it therefore declined to regard so much of the Italian law as held the second codicil well executed, and then, recurring to the English law, to apply the principle of confirmation, and refused probate of all three papers (*k*).

Estate to be
administered
by court where
estate is
situate.

But if any part of the property be in England, probate or administration must also be taken out here; for though the law of the domicil of a deceased person governs the succession to his personal estate wherever situated, the estate itself must be administered in the country in which

(*h*) *Gutierrez, In goods of*, 38 L. J., P. & M. 48.

(*k*) *Pechell v. Hilderley*, 38 L.

(*i*) *In the goods of Probart*, 36 J., P. & M. 66.

possession is taken of it under lawful authority (*l*). The duty of the English court would in such a case be, as it were, ministerial merely, to grant ancillary probate or administration. Law of domicile.

Thus where an executor is appointed by a foreign will, the nature and extent of the office conferred by the appointment are regulated by the law of the testator's domicile, and not by the English law, even as to the property situate in England; if by the law of the domicile, the executorship lasts only for a limited period, the Court of Probate cannot, after that period has expired, grant probate to the executor. Where a domiciled Frenchman by his will appointed A. his *exécuteur testamentaire*, and B. his universal legatee; a French court having decided that A.'s executorship had expired, and that he had no longer any right to intermeddle with the estate of the testator either in France or England, but that such right belonged exclusively to the representatives of B.; the Court of Probate, holding that it was bound by that decision, refused to grant probate to A., and granted administration with the will annexed to the representatives of B. (*m*).

But where a domiciled Scotchwoman executed in Scotland, in the English form, a codicil which purported to be made in the exercise of powers conferred by an English settlement and an English will:—Held *dubitanter*, upon the authority of *In the goods of Alexander* (*n*), that the codicil, as it purported to be made under a power, was entitled to probate, although invalid by the law of the domicile of the testatrix (*o*). Married woman under powers.

And the Court follows the grant of the court of the testator's domicile, as to the document which that court

(*l*) *Preston v. Melville*, 8 Cl. & F. 1. (*n*) 29 L. J., P. & M. 93.
 (*o*) *Hallyburton, In goods of*, 35 L. J., P. & M. 122.
 (*m*) *Laneurville v. Anderson*, 30 L. J., P. & M. 25.

Law of
domicil.

Followed as to
document but
not as to
grantee, *sed*
quære.

has admitted to probate, but not as to the person to whom the grant is made (*p*) (but see below).

Thus, where administration of the estate of an intestate who dies domiciled abroad, is granted by the foreign court to a person entitled in his own right to administration, the Court of Probate will follow the foreign grant; but it will not do so, where the foreign grant is made to a nominee of the person entitled, except upon the express consent of the latter (*q*).

In the Isle of Man, officers called sumners are appointed in each parish by the bishop of the diocese, whose duty it is, *inter alia*, to take upon themselves grants of administration with the wills annexed, in the event of executors refusing to act or being unable to give security to the Ecclesiastical Court of the diocese. A. died in the Isle of Man leaving a will whereof he appointed executors: the executors being unable to give security to the Ecclesiastical Court of the diocese, administration with the will annexed was then granted to B., sumner for the parish in which A. died:—The executors having been cited and not appearing, the court upon an affidavit as to the circumstances under which the grant was made to B., and upon B.'s consent being filed in the registry, granted administration with the will annexed, to the residuary legatee (*r*).

By an ordinance of British Guiana, the Administrator General is empowered to administer to the estate and effects of every person who shall die intestate, and whose heir *ab intestato* shall be unknown, or, if known, shall be absent without having an attorney or agent in the colony to represent him; A. died in the colony, a bachelor and intestate, and having there no known relation, by virtue of the said ordinance the Administrator General took possession of the estate of the deceased in the colony, and ap-

(*p*) *Cosnamah, In goods of*, 1 P. & M. 41.
L. R., Prob. 183; 35 L. J., P. & M.

76.

(*r*) *Cubbon v. Steele and another, In goods of Whiston*, 30 L. J., P. & M. 192.

(*q*) *Weaver, In goods of*, 36 L. J.,

pointed B. his attorney to take out administration to the estate in England; upon motion for a grant of administration to B., the court directed that the next of kin should be cited, and that the usual notice to the Queen's Proctor should be given, and afterwards, upon one of the next of kin appearing to the citation and consenting, the grant was made as prayed (*s*). Law of domicil.

Administration limited to the receipt of dividends in the English funds, was granted to a minor residuary legatee, the wife of a minor, both subjects of and resident in Portugal, on a certificate being produced that, by the law of Portugal, she was entitled (*t*). Followed as to grantee.

This certificate, it is presumed, would not now be received in evidence, as the evidence must now be according to the Common Law.

Probate of the will of a married woman, a native of and domiciled in Spain, was granted, according to the law of Spain, to one of her sons as executor, on affidavit as to the law of Spain, and the identity of the parties (*u*).

In decreeing probate, the Court is usually regulated by the grant of the Court of Probate where the party was domiciled; i. e., the competent jurisdiction—in this instance, the Court of Supreme Judicature at Fort William, Bengal (*x*).

So where A. died domiciled in America, and by her will appointed B. her father sole executor and residuary legatee; B. died leaving part of the estate unadministered; on the application of his executors, who were all domiciled in America, administration of the unadministered estate of A. was granted to C. by the Court in America; the Court following the American grant allowed a grant of administration (with the will annexed) of the personal estate of A. in this country to go to C. (*y*). .

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|--|---|
| (<i>s</i>) <i>O'Brien, In goods of</i> , 31 L. J., | Hag. Ecc. R. 498. |
| P. & M. 194. | (<i>x</i>) <i>Larpernt v. Sindry</i> , 1 Hag. |
| (<i>t</i>) <i>Re Countess da Cunha</i> , 1 | Ecc. R. 382. |
| Hag. Ecc. R. 237. | (<i>y</i>) <i>Hill, In goods of</i> , 39 L. J., |
| (<i>u</i>) <i>Re Donna de Maraven</i> , 1 | P. & M. 52. |

Foreign grant
followed as
to grantee.

And administration of the personal estate in England of a domiciled Scotchman was granted to A., appointed by the Court of Session in Edinburgh, *factor loco tutoris* to the infant children of the deceased (z).

But the law of the place of domicile will not, however, be followed where it would, by so doing, be acting in contradiction to the law of this country (a).

V. WHERE THE WILL WAS MADE.

Before probate in common form of a foreign will can be obtained, it is necessary to show, either that the will has been recognized as valid by a court of the foreign country, or that it is a valid will according to the law of the foreign country, and that the testator was domiciled in the foreign country; in order to show that a foreign will has been recognized as valid by a court of competent jurisdiction of the foreign country, a notarial certificate is not sufficient; a duly authenticated copy of the act or sentence of the foreign court, recognizing its validity, should be produced: if probate is sought of a foreign will, originally written in the English language, as having been recognized as valid by the court of the foreign country, a retranslation of the translation so recognized in the foreign country should be produced; but if probate is sought of such a will as being valid according to the law of the foreign country, a copy of the original should be produced (b).

Previous to the year 1861, many nice questions arose as to how far wills were valid where a change of domicile, subsequent to the making of the will, had occurred. These questions however now, *as far as British subjects* are concerned, are put an end to by the 24 & 25 Vict. c. 114,

(z) *Jones, Wm., In goods of*, 28 L. J., P. & M. 80. See also *Johnston, In goods of*, 4 Hag. Ecc. R. 182.

1 Sw. & Tr. 253; and 28 L. J., P. & M. 129; but see *Re Countess Da Cunha, supra*.

(a) *In goods of Her Royal Highness the Duchess of Orleans,*

(b) *De Vigny, In goods of*, 34 L. J., P. & M. 58.

which renders valid wills, if they were valid, first, by the law of the place where they were made; or second, by the law of the testator's domicile at the time of the making; or third, by the law of the testator's domicile of origin.

It further enacts (sect. 2), that all wills made within the United Kingdom shall be admitted to probate in England and Ireland, and to confirmation in Scotland (which is the Scotch term for probate), if made according to the law of the place where they were executed, whatever may be the domicile of the testator at the time of his death; that is, a will made in Ireland according to the Irish law, may be proved in England or Scotland without being first proved in Ireland, although the testator died domiciled in France. The third section prevents a change of domicile, occurring subsequently to the execution of a will, having any effect on it.

The effect of this statute in relieving the court from trying difficult questions of domicile and in carrying out the real wishes of testators, has been most beneficial; for under it, where a testator dies abroad leaving a will executed in England according to the English law, it becomes no longer material to inquire whether or not he has acquired a foreign domicile (*c*).

Formerly much difficulty was experienced in getting representatives of a deceased domiciled in England, Scotland or Ireland appointed, when he died possessed of property in either or both of the other two countries where he was not domiciled, besides his property in the country where he was domiciled, as the three countries were foreign countries to one another. This has now been much facilitated by the operation of the 20 & 21 Vict. c. 79 (relating to Ireland), and the 21 & 22 Vict. c. 56 (relating to Scotland). These acts, however, have not a retrospective effect, at least the latter act does not apply to a confirmation granted previous to its operation (*d*). Nor does it

24 & 25 Vict.
c. 114.

Sec. 2.

Sec. 3.

Grants under
21 & 22 Vict.
c. 56.

(*c*) *In goods of Rippon*, deceased,
32 L. J., P. M. & A. 141.

(*d*) *Gordon, In goods of*, 2 Sw. &
Tr. 622.

21 & 22 Vict.
c. 56; 20. & 21
Vict. c. 79.

apply to eiks or additional confirmations which do not confirm the executors in respect of personal estate situate in Scotland, but only in respect of personal estate situate in England (*e*); nor generally to eiks (*f*).

But where on the death of the testator, a domiciled Scotchman, his widow filed in the Commissary Court at Jedburgh an inventory of his estate, distinguishing which part of his estate was situate in Scotland, and which in England, and the value of each, and she was decreed and confirmed executrix dative to the deceased and the confirmation was sealed in England under this statute, and subsequently additional estate was discovered in England, and thereupon the executrix filed a fresh inventory of such estate in the Commissary Court and obtained an eik or additional confirmation, the court ordered the eik to be sealed in the registry (*g*). In this case it will be observed that although the eik related only to property in England, the original confirmation had been already sealed in the English registry.

It was formerly held that the note or memorandum on a probate that the deceased died domiciled in England, mentioned in sect. 14 of this act (*h*), must be written before the probate issues; therefore, when A. died domiciled in England, possessed of personalty in Scotland, and probate of his will was issued, without a note that the deceased died domiciled in England written on it, the court refused to allow such a note to be made on it, and also refused to revoke the probate, that a new one might be granted stating such fact (*i*).

But this case is now overruled and the note or memorandum may be written after the probate has issued (*j*).

The form of a testament testamentar, or confirmation of

(*e*) *Wingate, In goods of*, 2 Sw. & Tr. 625.

(*h*) 21 & 22 Vict. c. 56.

(*f*) *Hutcheson, In goods of*, 3 Sw. & Tr. 165.

(*i*) *Muir, In goods of*, 28 L. J.,

P. & M. 49.

(*g*) *Ryde, In goods of*, 39 L. J., P. & M. 49.

(*j*) *Allison, In goods of*, 34 L. J.,

P. & M. 20.

an executor nominate contained in schedule (E.) of the Confirmation and Probate Act, 1858 (21 & 22 Vict. c. 56), recites that the executor nominate has given upon oath an inventory of the personal estate and effects of the deceased at the time of his death situated in Scotland, or England, or Ireland. A confirmation was tendered for sealing from which the words at the time of his death were omitted:—Held that those words had been properly omitted since the passing of the 23 Vict. c. 15, and the 23 & 24 Vict. c. 80, and the confirmation was ordered to be sealed (*k*).

21 & 22 Vict.
c. 56.
“At the time
of his death.”

The seal of the court to Irish or Scotch grants must be affixed by, and application must be made to, the principal registry. No application of that description can be made to a district registry (*l*).

Scotch or Irish
grants.

For the necessary affidavit and steps to be taken where a grant of probate or administration under the 21 & 22 Vict. c. 56, is required for the whole personal estate and effects of a deceased within the United Kingdom, see Rule 74 of the Principal Registry (Non-c.), and Rule 86 of the District Registry.

The object of the 12th section of the Confirmation and Probate Act, 1858, is to render unnecessary a second application for probate; the interlocutor of the commissary is not, therefore, conclusive evidence of domicile when that question is raised in another court. When probate has been granted in common form, and a contest is discovered after it has been sealed, but before it has left the office, the court will not allow it to be taken out of the registry (*m*).

21 & 22 Vict.
c. 56, s. 12.

The executors of a Scotch will, having sent the original confirmation granted by the Commissary Court to the Colony of Victoria, obtained a duplicate confirmation from that court, and applied under the 12th section of the 21 & 22 Vict. c. 56, to have the seal of the Probate Court

(*k*) *Hay, In goods of*, 33 L. J.,
P. & M. 25.

(*m*) *Hamarden v. Dunlop*, 31
L. J., P. & M. 17.

(*l*) Rule 87, D. R.

21 & 22 Vict.
c. 56, s. 12.

affixed to it; the court ordered the seal to be affixed, on the ground that it was bound to give faith to the commissary's certificate, and could not take into consideration the facts that the confirmation was a duplicate (n).

Irish grant.
20 & 21 Vict.
c. 79, s. 95.

Where A. died in Ireland, possessed of personal property in England, and the Irish Court of Probate granted administration of his effects to B., no will having been found; afterwards C. propounded in this court a will of the deceased; B. opposed it, and obtained a verdict upon issues raised by him: upon the application of B. the court ordered the Irish grant of administration to be delivered out of the registry, in order that it might be resealed by this court under the 20 & 21 Vict. c. 79, s. 95 (o).

Nuncupative
wills before
1838.

Prior to the 1st of January, 1838, the solemnities required for making a valid will of personalty were very different to those required by the present law. The 5th section of the Statute of Frauds, which required a signature by or on behalf of the testator, and an attestation by three or more credible witnesses, only applied to real estate, such as was then devisable. As far as personal estate was concerned, the will needed not even to have been in writing; but if it disposed of property exceeding 30*l.* in value, it must have been proved by three witnesses that were present at the making of it, and the testator must have bidden the persons present or some of them to bear witness that it was his will, or to that effect; and it must have been made in his last illness, and in his own house or in a house where he had been resident for ten days or more before the making of such will, except he were surprised or taken sick, being from his own home, and died before he returned to the place of his dwelling. But if not in writing, and the deceased lingered on for six months, or if six months elapsed by any means before the evidence of the witnesses could be taken, no testimony of it could be

(n) *Webster, In goods of*, 29 L. J., P. & M. 66.

(o) *Divenny v. Corcoran*, 32 L. J., P. & M. 26.

received, unless such testimony were committed to writing within six days after the making of the will (*p*). It could not be proved till after the lapse of fourteen days from the death of the testator, and process must first issue to cite the widow and next of kin (*q*). Neither could such a will operate to set aside a previous will, which was in writing (*r*).

Nuncupative
wills before
1838.

These preliminaries have always been construed strictly: where one of the three witnesses died before he could give his evidence, the will was held to be invalid (*s*).

The requisites to make a valid will therefore were—

1st. The words must be spoken *animo testandi*.

2nd. Testator must require the bystanders to bear witness—called in these courts *rogatio testium*.

3rd. The will must be made at home or among his family or friends, unless by unavoidable accident.

4th. It must be in his *last* sickness.

5th. The proof of the three witnesses must be given before six months have passed since the speaking of the words.

6th. Probate must be applied for after the lapse of fourteen days from the death of the testator, and after citing the widow and next of kin.

Thus, although the statute of Car. 2 did not in words enact that all wills should be in writing, it imposed so many restrictions (all which were construed strictly) on wills consisting of mere words spoken, that long before the present Wills Act such testaments had become quite obsolete, and the practice was to commit them to writing. Wills executed before the statute of Victoria are now frequently brought for probate, and as they are not affected by that statute, the requisites for admitting them to probate are quite distinct from those of wills executed subsequently to that act. On reference to the rules respecting the probate of wills,

(*p*) 29 Car. 2, c. 3, s. 20.

(*q*) Ib. s. 21.

(*r*) Ib. s. 22.

(*s*) *Phillips v. St. Clement*
Danes, 1 Abr. Eq. Ca. 404.

Made before
1838.

Unsigned
will.

&c. relating to personalty and dated before the 1st January, 1838, which are in fact an epitome of the law as it stood previously, it will be seen that no signature by the testator or attestation by witnesses, is necessary to make such a will valid, but in such cases the intention of the testator that it should operate as such, must be clearly proved by circumstances (*t*).

The "circumstances" which prove or disprove the intention of the testator are the following:—

1. The place of deposit.
2. Reading over the alleged will by or to the deceased.
3. Execution prevented by act of God.
4. The writing of the will itself.
5. Subsequent recognition.
6. The form of the instrument; and the like.

Will in tes-
tator's hand-
writing.

If the will is in the handwriting of the testator it is not sufficient, but "the inclination, amounting almost to a settled principle of Courts of Probate—founded perhaps on the facility with which handwriting may be imitated,—has been not to pronounce for a disputed paper on evidence of handwriting alone, but to require some corroborating circumstance" (*u*). And it is conceived that the point on which the court requires corroborative proof is, that the document was written *animo testandi*, and not as a mere memorandum for further reflection as in *Rymer v. Clarkson* (*w*); since the presumption of law is against such a document, as the law would presume from the fact that such a will was written that it was intended to be executed.

Circumstances
of corrobora-
tion.

The circumstances of corroboration of a will in the handwriting of the testator but unsigned are various.

Where the document was read over by the deceased to his housekeeper as his will, and found in a place where he

(*t*) Rule 17, P. R. Non-c.; Rule 22, D. R. *other*, 1 Hag. Ecc. R. 60.

(*w*) 1 Phill. 22.

(*u*) *Constable v. Steibel and an-*

had deposited it, but unexecuted and unsubscribed :—Held a valid will (*x*). Made before 1838.

Where a codicil unsigned, and with an attestation clause unattested by witnesses, was read over to the deceased and deposited with a duly executed will by his direction, but he was too ill to sign the codicil :—Held a valid codicil (*y*). Place of deposit and reading over before death.

Where the paper was drawn out in the handwriting of the deceased, with an attestation clause, but was neither signed nor attested, and the deceased died suddenly before he could have the will executed and attested :—Held well established, as the full execution was prevented by the act of God (*z*). Execution prevented by the act of God.

Where there is an attestation clause, and there are no witnesses, the presumption is against the document, as “however clear the proof may be that at the time the deceased wrote he intended to dispose of his property by will, yet it being equally clear that in order to give effect to the instrument, he intended to do the further act of signing in the presence of witnesses, the law requires it to be shown, why the further act was not done” (*a*). Unattested will with attestation clause.

The presumption is that a codicil disposing of realty as well as personalty, unattested, only signed by initials, and with many interlineations, is unfinished and preparatory ; and then it must be shown the deceased thought it would operate in its actual form, or was prevented by a sufficient cause from executing it (*b*). Unexecuted paper.

When a paper is unfinished the presumption of law is strong against it ; especially when it is to alter an executed instrument, still more when to revoke a disposition of the bulk of the property to the deceased’s own family and transfer it to a stranger (*c*).

But where there is final intention proved, and execution Unexecuted will.

(*x*) *Read v. Phillips*, 2 Phill. 122.

(*a*) *Scott v. Rhodes*, 1 Phill. 19.

(*y*) *Thomas v. Wall*, 3 Phill. 23.

(*b*) *Reay v. Cowcher*, 2 Hag. Ecc. R. 249.

(*c*) *Ib.* 254.

(*z*) *Scott v. Rhodes*, 1 Phill. 12.

Made before
1838.

prevented by the act of God, the mere want of execution does not invalidate an instrument disposing of personalty; the disposition has the same legal effect as if the instrument had been actually signed and attested (*d*).

Prevented by
the act of God.

Where a testator executed a will and two codicils, and afterwards had a new will and certain bonds prepared, which were, in conjunction, to dispose of his property, on the same principle as his former will, and died when preparing to sign the new will; first, the execution being thus finally determined on and prevented, the new will is entitled to probate; and, secondly, the new will never being intended to operate independent of the bonds, the court is bound, in order to carry his intentions most nearly into effect, to grant probate of the new will, and of the unexecuted bonds, as together containing his will; and to revoke a probate of the former papers (*e*).

Intention of
deceased.

Even instructions for a will, containing the fixed and final intentions of the deceased, were held to be valid, if the formal execution is prevented by death (*f*).

And letters containing final testamentary intentions are valid as a will, the deceased considering no further act necessary; nor will they be invalidated, by the deceased not having subsequently disposed (as she had purposed) of a small part of her property (*g*).

Where a testator left a paper with certain names and sums opposite to them, and accompanied by bank notes of corresponding amount, such a paper was held to be of testamentary validity (*h*).

Pencil writing.

The *primâ facie* presumption is that *pencil* alterations are deliberative, and those in *ink* final; when they are of both kinds in the same instrument the presumption is strengthened (*i*).

(*d*) *Masterman v. Maberly*, 2 Hag. Ecc. R. 247.

(*e*) *Ib.* 235.

(*f*) *Burrows v. Burrows*, 1 Hag. Ecc. R. 109.

(*g*) *Manley v. Lakin*, 1 Hag. Ecc. R. 130.

(*h*) *Huble v. Clark*, *ib.* 118.

(*i*) *Hawkes v. Hawkes*, 1 Hag. Ecc. R. 321.

But in one case probate was granted in common form of a will written entirely in pencil by the deceased, who, a few days before death, declared she wished it to operate, unless altered (*k*). Made before 1838.

Where a paper had an attestation clause in the plural number, but only one witness, and the date of the year written on an erasure; on affidavit of the executor to a recognition, and from the attesting witness to the time and intention of executing, probate of such paper in common form was decreed, though one of four persons entitled in distribution refused to consent, but had entered no caveat (*l*). Subsequent recognition. Attested by one witness (clause in plural number).

And probate in common form was decreed of a paper, with an attestation clause in the plural number and only one witness, on affidavit of an implied recognition (*m*).

Similarly, probate in common form of a paper with an attestation clause and witness, was decreed to the only person entitled under an intestacy, on affidavit of recognitions of it as his will by the deceased (*n*). Attestation clause, no witness.

Previous to 1 Vict. c. 26, wills affecting real estate were regulated by the 5th section of the Statute of Frauds (29 Car. 2, c. 3), by which three or four credible witnesses were required; and this is still the law as to all devises of land made previous to 1838, so far as the same are to affect realty. Realty.

Over wills operating only on realty the court has no jurisdiction, but if there be any portion of the will affecting personalty then the jurisdiction of the court arises. Over wills, therefore, made prior to 1838, the court would have no jurisdiction if they relate to realty only; if, on the other hand, a will made prior to 1838 related to personalty as well as realty, the court would grant probate of such a will if sufficient to pass the personalty, without inquiring how

(*k*) *Re Dyer*, 1 Hag. Ecc. R. 219.

(*m*) *In goods of Sparrow*, 1 Hag. Ecc. R. 479.

(*l*) *Re Vanhagen*, 1 Hag. Ecc. R. 478.

(*n*) *Re Jerrans*, 1 Hag. Ecc. R. 550.

Made before
1838.

far it would stand valid as a devise of realty. It would seem, therefore, that the subject of real devises made prior to 1838, is foreign to a work treating of the practice of the present Probate Court.

Wills executed
since 31st De-
cember, 1837.

If the date of the will be subsequent to the 31st December, 1837, it must be shown to have been executed according to the form prescribed by the Wills Act, sect. 9, (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses, present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary (*o*).

The 9th section is subsequently amended by a later statute (*p*). Every will shall, so far only as regards the position of the signature of the testator or of the person signing for him, be deemed to be valid within the said enactment as explained by this act, if the signature shall be so placed at, or after, or following, or under, or beside, or opposite to, the end of the will, that it shall be apparent on the face of the will, that the testator intended to give effect by such his signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the *testimonium* clause, or of the clause of attestation, or shall follow, or be after, or under the clause of attestation either with or without a blank space intervening, or shall follow, or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance

(*o*) 1 Vict. c. 26, s. 9.

(*p*) 15 Vict. c. 24, s. 1.

that the signature shall be on a side or page or other portion of the paper or papers containing the will, whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written, to contain the signature, and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said act or this act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the will is made.

This act has a retrospective effect, and affects every will, unless such a will or property under it, has been dealt with by some court of competent jurisdiction (*q*).

This is, therefore, the general form in which every will must be executed, but there are two classes of exceptions.

Execution of will subsequent to 31 Dec. 1837.

1. Wills executed previous to the operation of the act, *i. e.* wills executed prior to the 1st January, 1838, already considered, 1 Vict. c. 26, s. 34, and

2. The wills of soldiers in active service and sailors at sea, which we will hereafter consider, 1 Vict. c. 26, s. 11.

Testator's Signature.] Of course a mark by a testator is a sufficient signature, even though the testator be an educated person and able to write well (*r*).

Mark.

Where a testator unable from illness to sign his will, had his hand guided in making his mark—held a sufficient signature within the Statute of Frauds (*s*).

Where B., by the direction and in the presence of A., who wished to execute a testamentary paper, affixed and impressed at the foot of such paper the signature of A.,

(*q*) 15 Vict. c. 24, s. 2.

(*s*) *Wilson v. Beddard*, 12 Sim.

(*r*) *Taylor v. Dening*, 8 A. & E.

28.

Testator's signature. Mark. by means of a stamp or an engraving, which A., being paralysed, had had made for his ordinary use, and A. afterwards acknowledged the signature and asked witnesses to attest, it was held, that the affixing a stamp was equivalent to making a mark, at the direction of the testator, and that the making a mark was a signature (*t*). But the court declined to grant probate *on motion* (*u*).

Wrong name against the mark. A will purporting in the commencement and *testimonium* clause, to be that of S. C., was executed by a mark, against which was written the name S. B., and was handed by S. C. as her will to one of her executors, shortly before her death; B. had been the maiden name of S. C.: it was held, that as there was sufficient evidence that the mark was that of S. C., the execution of the will by her was not vitiated by another name having been written against her mark (*x*).

Wrong description in will. So, where A. put his mark to a testamentary paper, in which he was described throughout as B.; the court being satisfied on affidavit that A. duly executed the paper by mark, *animo testandi*, granted probate thereof as his will (*y*).

Signature affixed. Where the signature of a testator and the attestation clause were written on a piece of paper, bearing a bill stamp, pasted at the foot of the parchment upon which the will was written; it was held a good execution, since it was apparent on the face of the instrument, that the testator intended to give effect to it by his signature (*z*).

Where the signatures of the testator and attesting witnesses, were written on a separate piece of paper, which had been previously wafered to the foot of the will:—Held that the will was duly executed (*a*).

(*t*) *Jenkyins v. Gaisford*, 3 Sw. & Tr. 93; 32 L. J., P. & M. 122.

(*u*) 32 L. J., P. & M. 71.

(*w*) *Clarke, In goods of*, 27 L. J., P. & M. 18.

(*y*) *Douce, In goods of*, 2 Sw. &

Tr. 593; 31 L. J., P. & M. 172.

(*z*) *Gausden, In goods of*, 31 L. J., P. & M. 53.

(*a*) *Cook v. Lambert*, 32 L. J., P. & M. 93.

But the court refused to grant probate of the document *on motion* (b). Testator's signature.

For probate to be granted on motion it must appear that the paper was attached before execution :

For where after the death of A. there was found a will in her handwriting, which filled the four sides of a sheet of paper; to the bottom of the second side was attached by wafers, a piece of paper upon which was written a formal clause of attestation and the signatures of the deceased and of two witnesses; one of the witnesses was dead, and the other proved that the paper was duly signed and attested; but was unable to say, whether, before execution, it was attached to the will; the court refused to grant probate on motion (c).

Where the signature of a testator, who is too ill to write himself, is signed in his presence and that of the attesting witnesses, by a third party, such signature must, nevertheless, be accompanied by some act or word on the part of the testator, to show that it was made at his request (d). By some other person in his presence and by his direction.

But where it appeared on affidavit, that the testator had frequently afterwards confirmed a will so signed, and that the next of kin did not object, the court granted probate (e).

A. asked B. to witness his will; he subsequently asked C. if he would sign a paper (not mentioning its character) for him, and said he should wish B. to be also present at the same time; a few evenings afterwards they met by appointment, A. produced a paper from his pocket and (alluding to the death of his wife) observed, "They were aware that there had been a change in his circumstances which involved an alteration in his affairs;" he then so folded the paper that they could not see his signature or any other "Or acknowledged" by testator.

(b) *Lambert, In goods of*, 31 L. J., P. & M. 118.

(d) *Marshall, In goods of*, 13 L. T., N. S. 643.

(c) *West, In goods of*, 32 L. J., P. & M. 182.

(e) *Elcock, In goods of*, 20 L. T., N. S. 757.

Testator's signature.

writing upon it; but they believed they were signing his will:—Held, that the circumstances warranted the presumption that the signature of the testator was on the paper when the witnesses signed, and that there was a sufficient acknowledgment of it (*f*).

“Foot or end.”

Where the testator's signature was written partly across the last line but one of the will and entirely above the last line, with the exception of one letter, which touched the last line, it was held that the will was signed at the foot or end thereof (*g*).

Where the testator duly executed his will, which was written on the first and on part of the second page of a sheet of paper; beneath the subscriptions of the witnesses there was a clause appointing an executor, and beneath this and also on the third page were several alterations in the dispositions of the testator's property, apparently written from time to time; at the end of the whole and on the third page, the testator signed his name in the presence of witnesses who duly subscribed:—Held, that the presumption was that the testator intended his signature at the end, to apply to all that preceded it, and that as there was nothing to rebut such presumption, the whole was entitled to probate (*h*).

A will and one codicil were written upon the three first pages and the top of the fourth page of a sheet of paper, the beginning of a second codicil was written at the bottom of the fourth page, and the end of the codicil with the attestation clause and the signatures of the testatrix and the attesting witnesses, on the upper part of the same page beneath the end of the first codicil: the court granted probate of the second codicil, including the portion which appeared on the lower part of the page, being satisfied that it had been written before the concluding portion and

(*f*) *Becker v. Howe*, 39 L. J., & Tr. 429; 33 L. J., P. & M. 154.
P. & M. 1.

(*h*) *Cuttrall, In goods of*, 33

(*g*) *Woodley, In goods of*, 3 Sw. L. J., P. & M. 106.

the attestation clause and signatures, which appeared on the upper part (*i*). Testator's signature.

The name of the testator was at the foot of the will, but below the names of the attesting witnesses; both witnesses were dead, and there was no evidence of the order in which they and the testator signed the will, but a due execution was to be inferred from the attestation clause: the court decreed probate of the will (*h*). Testator's signature after those of the witnesses.

The testatrix signed her will below the signatures of the attesting witnesses, but before they signed; she afterwards executed a codicil, but signed it after the witnesses who attested it, though on the same occasion:—Held the will was entitled to probate, but the codicil was not (*l*).

A. made his will on a printed form; after he had written his name in the attestation clause, he asked the witnesses to subscribe and attest the will, which they did in his presence; he then wrote his name underneath their signature, and remarked that they were witnesses to his will:—The court being satisfied on the evidence that he intended, by signing his name in the attestation clause, to execute the will, ordered probate to issue without the signature of the deceased written under the names of the witnesses (*m*). Testator's signature among words of testimonium clause.

A testimonium clause was as follows, "In witness whereof I, Martin Hall Mann, have hereunto set my hand:" the whole of this was in the testator's writing, and his name written as he usually signed it, but the will was not otherwise signed by him:—Held that the will was duly executed, the signature being placed "among the words of the testimonium clause" within the meaning of the above section (*n*).

Similarly where the testator wrote out his own will, with an attestation clause, in which his name appeared, but was

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|---|---|
| (<i>i</i>) <i>Kimpton, In goods of</i> , 33 | J., P. & M. 158. |
| L. J., P. & M. 153. | (<i>m</i>) <i>Casmore, In goods of</i> , 38 |
| (<i>h</i>) <i>Puddlephatt, In goods of</i> , 39 | L. J., P. & M. 54. |
| L. J., P. & M. 84. | (<i>n</i>) <i>Mann, In goods of</i> , 28 L. J., |
| (<i>l</i>) <i>Hoskins, In goods of</i> , 32 L. | P. & M. 19. |

Testator's signature. not written at the foot or end or otherwise than in the attestation clause, it was held a valid execution (*o*).

Where the only signature of the deceased, attached to the will, was squeezed into what had been a blank space in the attestation clause, and the witnesses were asked by the deceased to sign her will, but she wrote nothing in their presence, nor did they or either of them notice her signature:—The court, being satisfied from the circumstances of the case, that she had signed her name before the witnesses subscribed, decreed probate (*p*).

Position of testator's signature insufficient.

The signature to a will, required by the Wills Act, must be at the foot or end of the whole of that which the deceased intended to execute as his will; if it is at the foot or end of a portion only of that which he intended to execute, no portion of the will is entitled to probate (*q*).

“ Beside or opposite to the end.”

A codicil written on half a sheet of note paper occupied so much space as not to leave room for the signatures of the testator and of the witnesses in the ordinary form; beneath it were the signatures of the two witnesses, and on the right side of the paper, in a blank space between its edge and the codicil, the signature of the testator was written at right angles to the codicil; the testator signed in the presence of the witnesses, who duly subscribed:—Held that the codicil was duly executed, within the meaning of the 15 & 16 Vict. c. 24, s. 1, the signature of the testator being “ so placed beside or opposite to the end ” of the codicil, that it was apparent on the face of it that the testator intended to give effect, by such signature, to the writing as his codicil (*r*).

So where a will filled the first and third pages of a sheet of foolscap paper, leaving no room at the bottom of the third pages for the signatures of the testator and attesting

(*o*) *Walker, In goods of*, 2 Sw. & Tr. 354; 31 L. J., P. & M. 62.

land & anor., 34 L. J., P. M. & A. 42.

(*p*) *Huckvale, In goods of*, 36 L. J., P. & M. 84; 1 L. R., Pro. 375.

(*r*) *In the goods of Jones, deceased*, 34 L. J., P. M. & A. 41.

(*q*) *Sweetland & anor. v. Sweet-*

witnesses, which were written crossways on the second page, it was held the will was duly executed (*s*). Testator's signature.

So where a will filled two pages of a sheet of note paper, leaving no room on the second page for the signatures of the testator and attesting witnesses, which were written along the sides of the will upon the third page, it was held a due execution (*t*). "beside,"

So where a testator wrote on three sides of a sheet of note paper, the attesting clause and names of the attesting witnesses were at the bottom of the second side, a dispositive clause was written on the third side, and all the letters of the testator's signature, excepting the two last, which extended over to the third side, were on the second side (*u*).

Where a will was written on the first two sides of a sheet of paper, the lower half of the second side was left blank, and on that blank space there was ample room for the testimonium and attestation clauses, and for the signatures of the deceased and attesting witnesses; these were, however, written on the third side, the signature of the deceased being opposite the first line of the concluding sentence of the will, which was the ninth line from the bottom:— Held that the will was duly executed (*x*). "or opposite to,"

Where a will ended in the middle of a third page of a sheet of foolscap paper, the lower half of the page being left blank, and the attestation clause and the signatures were written at the top of the fourth page, it was held duly executed (*y*). "on a page where no clause."

Where an attesting witness to a will, instead of writing his name, wrote "servant to Mr. S.," believing that to be the proper mode of subscribing the will, the attestation and subscription were held sufficient (*z*). Witness's signature.

(*s*) *Coombs*, *In goods of*, 36 L. J., P. & M. 25; 1 L. R., Pro. 302.

(*t*) *Wright*, *In goods of*, 4 Sw. & Tr. 35; 34 L. J., P. & M. 104.

(*u*) *Powell*, *In goods of*, 4 Sw. & Tr. 34; 34 L. J., P. & M. 107.

(*x*) *Williams*, *In goods of*, 35 L. J., P. & M. 2.

(*y*) *Hunt v. Hunt*, 1 L. R., Pro. 209; 35 L. J., P. & M. 135.

(*z*) *In the goods of Sperling*, deceased, 33 L. J., P. M. & A. 25.

Witnesses' signature.

The hand of L., one of the attesting witnesses to a will, who was unable to write, was, at his request, held and guided by the other witness, and so L.'s name was subscribed; it was held the will was duly attested and subscribed by L.; under section 6 of the Wills Act (*a*).

Where the names of two attesting witnesses to a will, who were unable to write, were written by another person, whilst they held the top of the pen; it was held the will was duly attested (*b*).

To constitute a subscription by the attesting witness to a will, under 1 Vict. c. 26, s. 9, the witness, if he does not sign his name, must make some mark on the will, with the intention that that mark shall represent his signature, as attesting the execution (*c*).

An attesting witness must himself subscribe the will; it is not essential that the witness should sign his own name, provided it is clear that his subscription is intended as an act of attestation; the name of A., an attesting witness to a will, was, at his request, subscribed by B., who was present at the execution:—Held that as A. had not subscribed, and B.'s subscription was not intended as an act of attestation, the will was not duly executed (*d*).

“In the presence of.”

Deceased, in the presence of two witnesses, wrote something at the bottom of her will; she then placed a piece of blotting paper over the attestation clause, in which alone her name appeared, and asked the witnesses to sign their names at the side, which they did; they did not see the deceased's signature, nor did she acknowledge it in their presence; the will terminated with a full attestation clause in the deceased's handwriting:—Held that, as from the circumstances, the court was satisfied that the deceased wrote her signature in the presence of the witnesses,

(*a*) *Frith, In goods of*, 27 L. J., P. & M. 6.

(*b*) *Lewis, In the goods of*, 31 L. J., P. & M. 153.

(*c*) *Charlton v. Hindmarch*, 28 L. J., P. & M. 132.

(*d*) *Duggins, In goods of*, 39 L. J., P. & M. 24.

although they were not aware of it, the execution was valid (e). “In the presence of.”

“An act can hardly be said to be done by one person in the presence of another, unless at the time each is aware of the presence of the other.” Wilde, J. O.

A codicil which had previously been signed by a testatrix, was signed by the attesting witnesses in a sitting room, the door of which was opposite to the door of a room where the testatrix was lying in bed; at the time, both doors were open, and the testatrix might, by raising herself in bed, have seen the witnesses sign; it did not appear that she had done so, and the witnesses neither saw her, nor heard her voice:—Held the codicil was not duly attested (f).

When the attestation clause to a will is insufficient, the court will not dispense with the affidavit of the attesting witnesses as to due execution, which the registrars are directed by the rules in such case to require; the attestation clause to a will executed abroad, being insufficient, the court refused to grant probate without an affidavit by the attesting witnesses, as to due execution, although it appeared from a certificate of the British consul indorsed on the will, that the attesting witnesses had on oath proved due execution (g). Attestation clause, if insufficient.

Where the deceased wrote on the first side of a sheet of foolscap paper, his intended will, and his signature at the end of it; by the side of the signature was the word “witness,” and one name subscribed; at the top of the second page, the deceased wrote a memorandum describing his leasehold property, but not testamentary; this was subscribed by three persons, whom in the will the deceased had nominated as trustees:—Held that as only one person attested and subscribed the will, the execution was invalid (h).

(e) *Smith v. Smith*, 35 L. J., P. & M. 65.

(g) *Latham, In goods of*, 33 L. J., P. & M. 186.

(f) *In the goods of Kellick*, deceased, 34 L. J., P. M. & A. 2.

(h) *Wilson, In goods of*, 36 L. J., P. & M. 1.

"In the presence of."

Where a testamentary paper, which, upon the face of it, appeared to have been duly executed, was not signed in the presence of the attesting witnesses, nor did they when they signed see any writing:—Held that it was not duly executed (*i*).

Presumption of due execution.

A testator wrote with his own hand on the back of his will, which was duly executed, a codicil headed "Memorandum dated the 25th of April, 1863;" it purported to have been executed on the 31st of August, 1863, and the attestation clause was perfect, save that it did not state that the testator had signed his name or acknowledged his signature in the presence of the witnesses; the witnesses could not say whether he did either one or the other in their presence; they did not see his signature when they signed, nor the will on the other side, and nothing was said as to the character of the paper; the court refused probate of the codicil on motion, but allowed the parties interested, if they thought fit, to propound it (*h*).

In questions as to due execution, the presumption "*omnia ritè esse acta*," applies with more or less force, according to the circumstances of each case; when there is a regular attestation clause, and the will, upon the face of it, appears to have been duly executed, the court will presume that the requirements of the Wills Act have been complied with, although the memory of the witnesses may have failed; when the attestation clause is informal, the presumption is less strong, but the leaning of the court, in such a case, is not to allow the testator's intention to be frustrated, by lapse of time and failure of the memory of the witnesses, especially when it appears that the testator signed the paper, and the witnesses were summoned for the express purpose of witnessing a will (*l*).

To the will of T., dated in 1842, there was no clause of attestation, but there were subscribed the names of three

(*i*) *Pearson, In goods of*, 33 L. J., P. & M. 38.
L. J., P. & M. 177.

(*l*) *Vinnicombe v. Butler*, 34

(*h*) *Swinford, In goods of*, 38 L. J., P. & M. 18; 3 Sw. & Tr. 580.

attesting witnesses; the only one of the witnesses who survived T. deposed that he witnessed the testatrix execute the will, but that no one else was present, and he then told her that the presence of another witness was requisite:—Held, in the absence of evidence as to the circumstances under which the other two witnesses signed, that it might be presumed that the testatrix had acknowledged her signature in their joint presence (*m*).

Presumption of due execution.

Where the attestation clause to a will is informal, and the attesting witnesses identify their signatures, and that of the testator, but have no recollection of the circumstances under which the will was executed, the presumption, in the absence of evidence to the contrary, is, that the will was duly executed (*n*).

Where one of the attesting witnesses was dead, and it appeared that it would be difficult, if not impossible, to discover the other, and the only parties interested in the estate consented, the court granted probate of the will, though in the attestation clause it did not appear under what circumstances the attestation clause had been made (*o*).

Where a will is written on several sheets of paper, and the last sheet only is duly executed, although the attesting witness did not observe the others, the *primâ facie* presumption is, that they all formed part of the will at the time of its execution; but where there is evidence from the provisions and structure of the will and other sources, tending to rebut or confirm this presumption, the question must be decided upon that evidence (*p*).

Where after the death of A. a codicil was found written by him on the first side of a sheet of paper, and beneath it was:—“For my signature and witnesses see next side;” on the fourth side, and level with the bottom of the

(*m*) *In the goods of Jane Thomas*, deceased, 28 L. J., P. & M. 33.

(*o*) *In the goods of Nicks*, deceased, 34 L. J., P. M. & A. 30.

(*n*) *In the goods of Rees*, deceased, 34 L. J., P. M. & A. 95.

(*p*) *Marsh & ors. v. Marsh & ors.*, 30 L. J., P. M. & A. 77.

Presumption of due execution. codicil, when the sheet was open, were the signatures of A. and of two attesting witnesses; when the witnesses signed it, the paper was folded and they were unable to see whether there was any writing on the first side:—

Held that in the absence of evidence that the codicil was written before the execution, it was not entitled to probate; Semble that if there had been such evidence, the codicil was duly executed under 15 & 16 Vict. c. 24 (q).

Execution by testator not presumed.

On the other hand, where attesting witnesses to a will, upon its face appearing to have been duly executed, swore positively that the testator had neither signed nor acknowledged his signature in their presence, and that when each of them signed, the other was not present: the court would not presume due execution, from the facts that there was a formal attestation clause to the will, and that prior to its execution, testator had received instructions as to the proper mode of executing it (r).

Soldier in actual military service.
Mariner or seaman being at sea.

Exceptions.] Provided always, that notwithstanding this Act, any *soldier, being in actual military service*, or any *mariner or seaman being at sea*, may dispose of his moveables, wages and personal estate as he or they might have done before the making of this Act (s).

Provided always, that any *soldier being in actual military service*, or any *mariner or seaman being at sea*, may dispose of his personal estate as he might have done before the making of this Act (t).

These terms, “soldier” and “mariner or seaman,” include all members of these professions, from the highest to the lowest (u).

“Soldier.”

The word includes soldiers who were in the service of the East India Company (x), even non-combatant officers,

(q) *Hammond, In goods of*, 32 L. J., P. & M. 200.

(r) *Croft v. Croft*, 34 L. J., P. M. & A. 44.

(s) 29 Car. 2, c. 3, s. 23.

(t) 1 Vict. c. 26, s. 11.

(u) *Earl of Euston v. Lord Henry Seymour*, 21 July, 1802, cited 3 Curt. 339.

(x) *Re Prendergast*, 5 N. of C. 92.

as surgeons in the East India Company's service (*y*); and Minor. the party, even though a minor, has the power of making a will, if he be within the words of this section (*z*).

What constitutes "actual military service," was fully discussed in *Drummond v. Parish*, and that the words, as respects the British soldier, are confined to those who are *on an expedition*: where, therefore, Major-General Drummond died at Woolwich, 1843, and at the time of his death was an officer holding a commission in her Majesty's army, filling the office of Director-General of the Royal Artillery and on full pay; he was held not to be in "actual military service" (*a*). "Actual military service."

Similarly, the will of a soldier made when quartered in New Brunswick and who died there, was not admitted to probate; he being held not to be at the time "in actual military service" (*b*).

Sir Herbert Jenner seemed to doubt that "our regiments in the colonies or in garrison at home are in actual military service;" this was in 1839, in time of peace (*c*).

But where a surgeon in the East India Company's service, whilst on board ship on his way out to join his regiment in India, wrote out his will, and died after arriving in Calcutta; he was held to be in "actual military service" when the will was written (*d*).

So where an officer went with his regiment to Africa, for the purpose of joining a military expedition into the interior, before the expedition left the British settlement for the interior, he signed a testamentary paper; the court held that the testator was on actual military service at the

(*y*) *Donaldson, In goods of*, 2 Curt. 522.
Curt. 386.

(*z*) *Farquhar, In goods of*, 4 N. 818.

of Ca. 651; *McMurdo, In goods of*,
37 L. J., P. & M. 14; 1 L. R., Pro.
540.

(*a*) *Drummond v. Parish*, 3 Curt. 386.

(*b*) *White v. Repton*, 3 Curt.

(*c*) *Phipps, In goods of*, 2 Curt.
368.

(*d*) *Donaldson, In goods of*, 2
Curt. 386.

Actual military service.

"Mariner or seamen."

Merchant seamen.

Purser.

"Being at sea."

Minor "being at sea."

time when the paper was signed, and that it was entitled to probate, though not attested by two witnesses (*e*).

The words *mariner* or *seamen* include seamen in the merchant service; at least, similar words in the Statute of Frauds were held to include them; for the court granted administration with a nuncupative will annexed (as contained in an affidavit of three witnesses), holding that the 29 Car. 2, c. 3, s. 23, applied to merchant seamen (*f*).

A purser in a man-of-war comes within the description (*g*).

Where a surgeon in the navy was invalided when on foreign service, and on his voyage home in a passenger ship, after being so invalided, he wrote a letter signed by him, but not in the presence of two witnesses, giving directions as to the disposition of his personal estate after his death, and died before reaching England; it was held, that the letter was entitled to probate, as the will of a mariner or seaman being at sea (*h*).

Where a seaman went on shore and there died by an accident, his will was allowed to pass as that of a "seaman "being at sea" (*i*).

A letter written by a merchant seaman in the Margate Roads was admitted to probate under this section (*k*).

So also where the master and part owner of a trading vessel arrived at Port Adelaide, whence he wrote and forwarded by post a letter, some sentences of which were testamentary; it was held that he was a mariner at sea, and consequently that such a letter, being in his handwriting and testamentary, was entitled to probate (*l*).

A mate, whilst on board her Majesty's ship Excellent,

(*e*) *Thorne, In goods of*, 34 L. J., P. & M. 131.

(*f*) *Morell v. Morell*, 1 Hag. Ecc. R. 51.

(*g*) *Hayes, In re*, 2 Curt. 338.

(*h*) *Saunders, In goods of*, 35 L. J., P. & M. 26; 1 L. R., Pro. 16.

(*i*) *Lay, In re*, 2 Curt. 375; see also *Lord Hugh Seymour's case*, cited 2 Curt. 375.

(*k*) *Milligan, In re*, 2 Robert. 108.

(*l*) *Parker, In goods of*, 2 Sw. & Tr. 375; 28 L. J., P. & M. 91.

which was permanently stationed in Portsmouth Harbour, and when under age executed a will, of which probate was granted to one of the executors named in it; on an application to revoke the probate, the court held that the deceased came under the exception contained in the statute as a seaman at sea; and, although a minor at the time, that he had legally executed a will (*m*). Minor being at sea.

Probate has been allowed to pass in common form, upon an affidavit from a clerk in the War Office, that the parties deceased were, at the time their wills were made, in actual military service (*n*). Practice.

But a mere averment that the deceased held such a rank in his regiment, was in such a place, and was in actual military service at the date of writing the paper in question, is not necessarily enough to entitle such paper to be treated as a soldier's testament; but the affidavit should contain a statement of the circumstances, full enough to enable the court to judge whether the case falls within the meaning attributed by previous cases to 1 Vict. c. 26, s. 11 (*o*).

Probate of a will made by a soldier in actual military service, signed but not attested, will not be granted, unless the signature be proved to be in the handwriting of the deceased, by the affidavits of two disinterested persons; it is not sufficient that the affidavits state that the whole paper writing is in the handwriting of the deceased, but they should in terms state that the signature is in his handwriting; the form for an affidavit of handwriting, given in the rules, should be strictly followed (*p*). Signature of military will.

The rule of court (*q*) which directs that "the registrars are not to allow probate of the will, or administration with the will annexed, of any obviously illiterate person

<p>(<i>m</i>) <i>McMurdo</i>, In goods of, 37 L. J., P. & M. 14; 1 L. R., Pro. 540.</p> <p>(<i>n</i>) 2 Curt. 368, note.</p> <p>(<i>o</i>) <i>Thorne</i>, In goods of, 4 Sw. & Tr. 36; 34 L. J., P. & M. 131.</p>	<p>(<i>p</i>) <i>Neville</i>, In goods of, 28 L. J., P. & M. 52.</p> <p>(<i>q</i>) Rule 71, P. R., Non-C.; Rule 81, D. R.</p>
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Military will. "to issue, unless they have previously satisfied themselves that the will was read over to the deceased before the execution, or that the deceased had at such time knowledge of its contents," applies to a will made by a soldier in actual military service and executed by mark (*r*).

Navy and marines.

In order to prevent the numerous frauds to which seamen were peculiarly liable, the legislature has enacted the Navy and Marines (Wills) Act, 1865 (*s*). It will be observed that this statute applies only to the inferior officers and ordinary seamen, and is directed principally, though not entirely, to affect wages, prize-money and the like. The statute will be found in Appendix I.

REVOCATION.

Of will made before 1838.

Before the 1 Vict. c. 26, s. 18, marriage and the birth of a child, even posthumous, operated as a revocation, whether there was intention to revoke or not, and such is still the law in reference to wills made before that statute.

Marriage alone was not, in the case of a man, a revocation (*t*).

But it was, in the case of a woman (*u*).

Where a will was made after marriage, the subsequent birth of a child was not of itself sufficient (*v*). Where a man married and afterwards made his will, and devised to his niece and afterwards died, leaving his wife *enceinte* with a daughter, which was unknown to him:—Held the birth of the daughter was not a revocation of the will (*x*).

Where C., in 1828, made his will in contemplation of marriage, whereby he appointed E. S., his intended wife, executrix, and made provision for her and the issue of the marriage, and shortly after married her and had children

(*r*) *Hackett, In goods of*, 28 L. J., P. & M. 42.

4 Rep. 61; *Cotter v. Layer*, 2 P. Wms. 624.

(*s*) 28 & 29 Vict. c. 72.

(*v*) *Shepherd v. Shepherd*, 5

(*t*) *Watson v. Magrath*, 1 Rob. 680; *Wilkinson v. Adam*, 1 Ves. & Bea. 465.

T. R. 15, note.

(*x*) *Doe v. Barford*, 4 M. & Sel. 10.

(*u*) *Forse & Hembling's case*,

by her; in 1857 C. died:—Held, that the will was re-
voked by the marriage and birth of a child (*y*). Before 1838,
revocation by
marriage.

But where A. by will provided an annuity for B., with whom he cohabited, and directed his trustee and executor out of his real estate, in case he should have any child or children by B., to raise £3,000 to be paid to and amongst his said children, and devised the remainder of his estate over to several of his relatives; afterwards he married B. and had several children by her:—Held, that such subsequent marriage and births did not revoke his will, the objects having been therein contemplated and provided for (*z*).

At common law, a will might be revoked by any act of the testator, which showed his intention, without the use of any words whatever (*a*). By any act.

When the substance of a will is propounded, the first point to be ascertained is, whether such a will was duly executed; if that is established, the next point is, whether it was in existence at the death of the deceased; if it was not, then the *prima facie* presumption that it was destroyed by the deceased, with intention to revoke, arises, which may be rebutted by further evidence (*b*). By destruction.

A deed intended to operate as an appointment of uses, but not sufficient for that purpose, might have the effect of revoking a will, if the party appeared to have had that intention (*c*). By deed.

But as to devises of lands, &c., they were only revocable in the manner pointed out by the 29 Car. 2, c. 3, s. 6, and the effect of the statute of 1 Vict. c. 26 seems to be principally to extend the method of revocation there to all wills, whether of personalty or realty. Devises of
land.

Notwithstanding sect. 34 (*d*), wills executed prior to

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| (<i>y</i>) <i>Cadywold, In goods of</i> , 27 L. J., P. & M. 36. | Ad. & E. 1. |
| (<i>z</i>) <i>Kenebel v. Scrafton and others</i> , 2 East, 530. | (<i>b</i>) <i>Podmore v. Whatton</i> , 3 Sw. & Tr. 449; 33 L. J., P. & M. 143. |
| (<i>a</i>) <i>Doe dem. Reed v. Harris</i> , 8 B. | (<i>c</i>) <i>Shove v. Pinche</i> , 5 T. R. 124. |
| | (<i>d</i>) 1 Vict. c. 26. |

Before 1838, revocation. 1838 are within the revocatory sections of the statute, whether by obliteration (*e*) or tearing or otherwise destroying (*f*).

By mutilation, presumption of date. Testator made his will in 1834, and upon his death in 1870, the will was found among his papers with the signature cancelled:—Held that it lay on the party, who alleged the revocation of the instrument by cancellation, to prove that the cancellation took place before the Wills Act came into operation (*g*).

Onus of proving revocation of a will whether before or after 1 Vict. c. 26. The onus of proving a testamentary paper lies on the party propounding it; once proved, the onus of showing that it has been revoked, on the party alleging the revocation. Where S. duly executed his will, and five years afterwards became insane, and died in a lunatic asylum, the will was seen in his custody two months after its execution, but it could not be found at his death:—Held that there being satisfactory evidence of the due execution of the will, the onus of showing that it was destroyed by S. when of sound mind, lay upon the party alleging its revocation (*h*).

Unrevoked codicil. Where the testator made a codicil to his will, and gave it to his son to keep; on his death, the will was not forthcoming:—Held that the codicil not having been revoked by any of the modes indicated in the statute, it was entitled to be admitted to proof (*i*).

Since 1 Vict. c. 26 (1838.) Since the 1st January, 1838, a will is revoked by marriage (*k*) (except certain wills made in the exercise of a power of appointment), or by another will or codicil, or by a writing executed like a will, or by burning, tearing or otherwise destroying the same (*l*). These are now the only methods by which a will can be revoked.

By Marriage, 1 Vict. c. 26, s. 18.] To revoke a will

- (*e*) *Brooke v. Kent*, 3 Moore, P. & M. 4.
P. C. C. 334. (*i*) *Savage, In goods of*, 39 L. J.,
(*f*) *Hobbs v. Knight*, 1 Curt. P. & M. 25; *Black v. Jobling*,
768. affirmed, 38 L. J., P. & M. 74.
(*g*) *Benson v. Benson*, 40 L. J., (*h*) 1 Vict. c. 26, s. 18.
P. & M. 1. (*l*) *Ibid.* s. 20.
(*h*) *Sprigge v. Sprigge*, 38 L. J.,

by marriage, the marriage must be a marriage valid by the laws of this country, and there is no distinction, in such a case, between a testator, who is a natural born and one who is a naturalized British subject (*m*). Since 1838, revocation by marriage.

Where a testator, being domiciled in Scotland, in anticipation of his marriage, which subsequently took place in Scotland, executed a deed of settlement, which he also intended should operate as his will; by the law of Scotland such a document, as a disposition of property at death, would not be revoked by the marriage of the contracting parties; the testator after his marriage became domiciled in England:—Held that as the settlement was valid by the law of domicile as a testamentary disposition, at the time of execution, as also subsequently to the marriage, and at the moment when the testator left the country, it continued valid notwithstanding the change of domicile (*n*).

Where the will of A., by which he exercised a power of appointment, and also disposed of his own personal estate, having been, as to his own estate, revoked by his subsequent marriage, the court granted letters of administration of his effects, save as to such of them as he was entitled to appoint by will (*o*). Exception.

So where A., under his marriage settlement, had in the event of his surviving B. (his wife) a power of appointing by deed or will amongst his children certain trust monies, and, in default of such appointment, the monies were to be equally divided amongst them; A. survived B. and by a will, executed in 1847, he being then a widower, directed the then unappropriated portion of such monies to be equally divided amongst his sons (a portion having been previously assigned to his daughter on her marriage); A., in 1855 contracted a second marriage, and died in 1858 without having executed any other will or any further appointment of the trust monies:—Held that the will of

(*m*) *Mette v. Mette*, 1 Sw. & Tr. P. & M. 43.
416. (*o*) *Mason, In goods of*, 30 L. J.,

(*n*) *Reid, In goods of*, 35 L. J., P. & M. 168.

Since 1838, revocation by marriage—exception.

1847, so far as it was an execution of the power of appointment, was not revoked by A.'s second marriage, though the same persons would take under the settlement, in default of appointment, as would have taken in case of an intestacy under the Statute of Distributions (*p*).

Where a married woman, in pursuance of the powers given to her under a particular deed, executed a will and codicil, by which she disposed of all the property referred to in such deed; her marriage was subsequently dissolved by a decree of the court for divorce and she remarried; after her second marriage she executed another will, by which, without referring to any power, she disposed of all her property, but she did not therein appoint an executor:—Held that the first will was not revoked by the second marriage, as it came under the exception contained in 1 Vict. c. 26, s. 18; nor by the second will, as the two were not inconsistent with one another; probate was granted of all the papers, as together containing the will of the deceased, to the executor named in the first will (*q*).

A. by his will gave a power to B. to dispose by will of certain property, which, in default of appointment by her, was to devolve on the person or persons who, at her decease, should be her "next of kin;" B. in pursuance of such power executed a will in favour of C., whom she afterwards married, but who died in her lifetime:—Held that B.'s will fell within the exception of the 18th section of the Wills Act, and was therefore not revoked by her subsequent marriage (*r*).

By another Will or Codicil, 1 Vict. c. 26, s. 20.] In interpreting a will and a codicil, the general rule is, that the whole will takes effect, so far as it is not inconsistent with the codicil (*s*). Where therefore a testator executed a codicil to his last will, and by such codicil absolutely re-

(*p*) *Fitzroy*, In goods of, 1 Sw. & Tr. 133.

(*q*) *Fenwick*, In goods of, 36 L. J., P. & M. 54,

(*r*) *M Vicar*, In goods of, 38 L. J., P. & M. 84.

(*s*) *Robertson v. Powell*, 2 H. & C. 762; 33 L. J., Ex. 34.

voked and made void all bequests and dispositions in the will, and nominated executors, but did not in direct terms revoke the appointment of executors and guardians in the will; it was held that the will was not revoked (t). Since 1838, revocation by another will, &c.

A testator devised nine houses to his son A. for life; and after his death to his children who should attain a certain age; but in case all such children should die under that age, then to trustees to permit his three daughters B., C. and D. to receive the rent during their lives in equal shares, and after their decease, to their children in fee; he afterwards made a codicil in these words:—"I hereby revoke that part of my last will and testament, whereby I give the nine houses unto my son and to his heirs; and my will is that my daughters C. and D. should enjoy them; I give and bequeath the freehold ground and houses to my daughters C. and D. equally and jointly between them, and to the survivor of them, and after their decease to their child or children equally; and if they should die, leaving no child or children, then the freeholds to go as ordered by my will." C. and D. died leaving no child; A., the son, died leaving a daughter his only surviving child, who was born in the lifetime of the testator, and attained the required age; but A. had had another daughter born in the lifetime of the testator, who had married and had a son, but both she and her son died in the lifetime of her father; the testator's daughter B. was also dead, but leaving two children:—Held that, notwithstanding the general words of the commencement of it, the codicil operated only as a partial revocation; that it operated as a revocation only so far as to effectuate the intention of the testator, as declared in the codicil, to prefer his daughters C. and D. and their children to his son A. and his children; that it operated nothing more, and that failing the objects of the preference, the testator's declared intention was that the will should operate as if there had

(t) *Howard, In goods of*, 1 L. R., Prob. 636; 32 L. J., P. & M. 32.

Since 1838, revocation by another will, &c.

been no revocation; and therefore that the daughter of A. was entitled to a moiety of the houses (*u*).

So where A. bequeathed leasehold premises to his daughter M. for her life, and after her death to and amongst her lawful issue equally share and share alike, with benefit of survivorship; and "in default of such issue," to his son G. for life, and after his death to his children equally share and share alike, with benefit of survivorship; by a codicil, the testator recited that he had by his will bequeathed to his son G., after the decease of his, the testator's, daughter M., "and in default of her leaving lawful issue," the leasehold premises; and stated that in case his son should not indemnify his estate from a debt incurred by the testator for the accommodation of his son, such bequest in the will in favour of his son should be revoked:—Held that the codicil did not revoke the will, but showed the sense in which the testator used in the will the words "in default of such issue" (*x*).

So a will disposing of the whole of the testator's property will act as a revocation of a will disposing of a part only (*y*). But if the subsequent testamentary paper is only partly inconsistent with one of earlier date, the earlier instrument is only revoked as to those parts where it is inconsistent, and both papers are entitled to probate (*z*).

As in interpreting a will and codicil, the general rule is that the whole will takes effect so far as it is not inconsistent with the codicil; and if the devise in a will is clear, it is incumbent on the party who contends that it is not to take effect by reason of a revocation in the codicil, to show an intention to revoke equally clear with the original intention to devise (*a*).

And the mere execution of a subsequent will, com-

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| (<i>u</i>) <i>Doe dem. Evers v. Ward</i> , 21 L. J., Q. B. 145; 18 Q. B. 197. | Ch. 295. |
| (<i>x</i>) <i>Darley v. Martin</i> , 13 C. B. 683; 22 L. J., C. P. 249. | (<i>z</i>) <i>Lemage v. Goodban</i> , 1 L. R., Prob. 57; 35 L. J., P. & M. 28. |
| (<i>y</i>) <i>Moorhouse v. Lord</i> , 32 L. J., | (<i>a</i>) <i>Robertson v. Powell</i> , 2 H. & C. 762; 33 L. J., Ex. 34. |

men- cing with the words "this is my last will and testa- ment," does not render it a revocatory instrument, as those words do not necessarily import that such instrument contained a different disposition of property, and that to render it a revocation of a former will, it must be proved that the contents of the latter instrument were different from the former; and where such subsequent will was not forthcoming, and its contents were unknown, the presumption of law was that it was destroyed by the testator *animo revocandi*, and that it did not revoke a prior will uncanceled (*b*).

Since 1838, revocation by another will, &c.

Where A., a married woman, made a will in 1848, in execution of a power of appointment, and in 1857 made another in execution of another power of appointment, the later will contained a general revocatory clause, but it did not refer to the will of 1848, or to the power in execution of which it was made, or to the property thereby appointed:—Held that the will of 1848 was not revoked (*c*).

Where A. by her will gave certain property, over which she had a power of appointment, to her four sons, and appointed B. executor; and by a subsequent will, which contained no clause of revocation, she gave all the property of which she might die possessed to three of her sons, and appointed C. her executor:—Held that the second will did not revoke the first, but that both were entitled to probate (*d*).

So where A., by his will made in 1853, gave all his real and personal estate to B., and appointed B. sole executor, and by a subsequent will, which contained no clause of revocation, he gave two houses to C., and appointed C. sole executor:—Held that the latter will was not inconsistent with the earlier, and therefore did not revoke it, and that

(*b*) *Catto v. Gilbert*, 9 Moore, P. & M. 169.

P. C. C. 131.

(*d*) *Graham, In the goods of*, 32

(*c*) *Joy, In goods of*, 30 L. J., L. J., P. & M. 113; 3 Sw. & Tr. 69.

Since 1838, re-
vocation by
another will,
&c.

B. and C. were entitled to probate of both instruments (*e*).

A testator by his will disposed of all his real and personal estate, and appointed B., C. and D. executors; by a subsequent testamentary paper, which contained no clause of revocation, he disposed of his personal estate only, and appointed B. and C. executors:—Held that the appointment of executors in the first testamentary paper was not revoked, and that the executors named in the second will were entitled to probate of both testamentary papers as together containing the will of the testator, leave being reserved to the other executors named in the first papers, to come in and take probate (*f*).

But where testator, having by his will appointed A. and B. executors, and by a codicil he appointed his wife sole executrix of his will:—Held that the appointment of the executors by the will was revoked (*g*).

Testator made a will in 1831; a few years before his death, in 1863, he produced, to two acquaintances, a paper dated 4th June, 1847, which he alleged to be his will, and got one of them to make a copy of it; this paper was in substance the same as the will of 1831; it had the name of the deceased, and the names of two attesting witnesses, at the bottom of it; but neither of the persons to whom it was shown could speak to any of the signatures; the copy which the deceased signed in their presence was forthcoming, but the original document could not be found: the court held, that there was no evidence of its existence as a will, and granted probate of the will of 1831 (*h*).

By subsequent
codicil.

Where A. executed a will and codicil, which had been prepared by her solicitor, bearing date the 14th of February, 1856; on the 10th of November, 1858, she copied the will, omitting several legacies, and executed the copy and

(*e*) *Graves v. Price*, 32 L. J.,
P. & M. 113.

(*f*) *Leese, In goods of*, 31 L. J.,
P. & M. 169.

(*g*) *Lowe, In goods of*, 33 L. J.,
P. & M. 155.

(*h*) *Gray, In goods of*, 39 L. J.,
P. & M. 42.

a codicil of the same tenor as the previous one; in 1861, she instructed her solicitor to prepare a further codicil, and he, not knowing that the will and codicil of 1858 had been made, drew up a codicil, which purported to be a codicil to the deceased's "last will and testament, bearing date the 14th of February, 1856," and the deceased duly executed it; after her death, the will and codicil of November, 1858, and the codicil of 1861, were found together, and, in another place, the will and codicil of February, 1856, from which the deceased's signature had been torn off; the court, being satisfied that the deceased intended the last codicil to be a codicil to the will of 1858, held, that the words "bearing date the 14th of February, 1856," as they were merely words of description, might be disregarded, upon the principle *falsa demonstratio non nocet si de corpore constat*, and granted probate of the will and codicil of the 10th of November, 1858, and of the codicil of 1861 (i).

Since 1838, revocation by subsequent codicil.

But where a codicil commenced "this is a codicil to my last will made on the 30th of June, 1858." The only will then in existence, was a will made on the 15th of April, 1859, but the testator had previously executed a will on the 30th of June, 1858, which had been destroyed when the later will was executed. There was nothing in the provisions of the codicil to show that the testator had intended it to be a codicil to the later will. There was evidence of declarations of the testator, before and after the codicil was executed, tending to show that he had meant it to be a codicil to the later will:—Held, first, that these declarations were not admissible for the purpose of showing the testator meant to refer to the will of 1859; secondly, that as the codicil in no way referred to the will of 1859, it could not be presumed that the reference to the other will was by mistake, and that the will of 1859 was consequently revoked (k).

(i) *Whatman, In goods of*, 34 L. J., P. & M. 17; see also *Anderson, In goods of*, 39 L. J., P. & M. 55.

(k) *Goodenough, In goods of*, 30 L. J., P. & M. 166.

By lost will.

On the death of the deceased, a duly executed will was found and probate thereof obtained; in a suit to revoke such probate, it was proved by parol evidence that a will of later date not forthcoming, had been in existence and duly executed, and had contained a clause of revocation of former wills; no copy of this last will had been made, and no written instructions had been given for it:—Held that the deceased had died intestate (*l*).

Deceased made a will in 1840, and in 1867, while on a visit to a friend, he employed himself much in writing, and stated he was writing out his will, and he gave his friend a paper writing, which he said was a copy of his will which he was going to execute; shortly after he duly executed a will, which, however, could not be found; the paper writing revoked all former wills:—Held that the will of 1840 was revoked by a will made in 1867, which, not being forthcoming, must be presumed to be revoked by destruction, and an intestacy was decreed (*m*).

Revocation by
“some
writing,” &c.

“*Or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed.*” 1 Vict. c. 26, s. 18. This writing need not be a will.

“The statute draws a distinction between wills and ‘codicils and ‘some writing;’ I am clearly of opinion that ‘this is ‘some writing’ declaring an intention to revoke a previous will, and, being only a writing of that character, cannot be called a will” (*n*).—*Ld. Penzance*.

A married woman, even though incompetent to make a will, may execute “a writing” of this description, by which she can revoke a will made *dum sola*. “No principle, authority or dictum of a legal tribunal was offered to this Court, for the proposition that a married woman is legally incapacitated from the revocation of a testamentary instrument in any of the modes pointed out by the 20th

(*l*) *Wood v. Wood*, 35 L. J., P. P. & M. 65.
& M. 34.

(*n*) *Fraser, In goods of*, 39 L. J.,

(*m*) *Johnson v. Lyford*, 37 L. J., P. & M. 20.

“section of the Wills Act; and as one of those modes is
 “by another will, or *by some writing declaring an intention*
 “*to revoke the same, and executed in the manner in which*
 “*a will is required to be executed*, it is not even necessary
 “in this case (so far as revocation is concerned) that the
 “paper of the 25th August, 1864, should have been a
 “*will* at all; for it is a *writing duly executed* as a will
 “should be, and it does in terms revoke all former wills
 “and appointments” (o).—Ld. Penzance.

By Obliterations, &c.] Obliterations and alterations, in order to operate as a revocation under this section, must be accompanied with the *animus revocandi*, and the testator must not merely have intended a substitution (p).

The obliteration, in order to be effective, “so far as the words or effect of the will before such alteration shall not be apparent,” must be such that none of the parts obliterated can be distinguished upon the face of the will, by the aid of magnifying glasses, or evidence of that nature: and extrinsic evidence, to make the previous effect of the will apparent, is inadmissible (q).

Tearing, Burning, or otherwise Destroying.] Where a testatrix duly executed a will contained in six sheets of paper, and signed her name at the bottom of each of the first five sheets; she afterwards cut off these signatures and struck through the signature at the end of the will with a pen, and wrote after it the word “cancelled,” with her initials and the date; the court, being satisfied that the will had been thus mutilated *animo cancellandi*, held that it had been revoked; a codicil executed before the revocation of the will and independent of the will was admitted to probate (r).

Testator duly executed his will in 1828; it was written

(o) *Hawkesly and another v. Barrow*, 35 L. J., P. & M. 69. 761; and see *James, In goods of*, 7 Jur., N. S. 52.

(p) *Townley v. Watson*, 3 Curt. 761. (r) *Harris, In goods of*, 33 L. J., P. & M. 181

(q) *Townley v. Watson*, 3 Curt.

Since 1838, revocation by mutilation.

on seven sheets of brief paper and each sheet was signed by the testator and the three attesting witnesses; on the testator's death in 1870, the will was found in a chest in which he kept papers of importance, with about eight lines at the top of the first sheet torn off; in all other respects the will was perfect, and there was no evidence as to the circumstances under which the mutilation was effected:—Held that part revocation of the instrument was only intended, and probate accordingly decreed of the will in its mutilated state (*s*).

The signatures of the attesting witnesses to a will, being an essential part of the will, the tearing them off by the testator, *animo revocandi*, revokes the will; where a will, of which the testator had the custody, is found so mutilated after his death, the presumption is that the mutilation was the act of the testator done *animo revocandi* (*t*).

So where, on the 15th December, A. being very ill, made his will, and gave it to his mother to take care of; on the 21st, at his request, she gave it back to him; on the 22nd he died, when the will was found under the bolster of the bed on which he died, the attestation clause and signatures of the attesting witnesses having been torn off: the will was held to be revoked (*u*).

Where a will, in the custody of the testator, is found after his death mutilated, the presumption in the absence of evidence is that it was mutilated by him after its execution, and, if there be a codicil, after the execution of the codicil; a testatrix wrote her will upon the four pages of a sheet of paper and upon the first page of another sheet, and in the presence of the attesting witnesses signed it at the bottom of that page and also at the top of the next page and underneath the latter signature the attesting witnesses signed their names; she afterwards duly executed a codicil on the second page, referring to the will;

- (*s*) *Woodward, In goods of*, 40 P. & M. 128.
 L. J., P. & M. 17. (*u*) *Lewis, In goods of*, 27 L. J.,
 (*t*) *Evans v. Dallow*, 31 L. J., P. & M. 31.

after her death both sheets of paper were found in a box inclosed in separate envelopes, but the top of the second sheet and with it the signature of the deceased was cut off, the signatures of the attesting witnesses remaining; there was no proof that any writing besides the testatrix's signature had been cut off, though this appeared probable from the fact that the conclusion of the first sheet referred to a certain disposition of property as following, which was wanting in the second sheet:—Held, 1st, that in the absence of evidence it must be presumed that the deceased mutilated the will after the execution of the codicil; 2nd. That when the codicil was executed, the will and codicil formed but one testament; 3rd. That the manner in which the will was cut, the preservation of both sheets, and other circumstances, showed that the testatrix intended not to revoke the will altogether, but only such part as was cut off, and therefore that the remaining part of the will and the codicil were entitled to probate (*x*).

Since 1838, revocation by mutilation.

Where a testator cut out of his will the names of the attesting witnesses, giving as his reason that he had some idea of altering it and having a new will made, and afterwards, on the same day, replaced the piece so cut out, saying that the will would do for the present; the court upon motion, with the consent of the persons interested in case of intestacy, granted probate (*y*).

In order that a will may be revoked by tearing, it must be shown that the testator intended that which he actually did, of itself to have had the effect of revoking it, without more: if he commences tearing it, with the intention of revoking it, and being about to tear further, stops *in medio*, the act not being complete, the will remains valid. A. having commenced tearing his will, which was admitted to have been duly executed, with the intention of revoking it, had nearly torn it in two pieces, when he

(*x*) *Christmas v. Whingates*, 32 L. J., P. & M. 73.

(*y*) *Eeles, In goods of*, 32 L. J., P. & M. 4.

Since 1838, revocation by mutilation.

stopped; there was some evidence to lead to the conclusion that he was about to tear further, and that he stopped at the entreaty of a bystander; the court being satisfied that the will had been duly executed and not satisfied on the evidence that it had been revoked, granted probate: when a duly executed will is propounded in a mutilated state there is a *prima facie* presumption that it was put in that state by the testator *animo revocandi*, but when evidence is given for the purpose of showing that such is not the case, the matter is at large, and the presumption must be disregarded, and a court or jury should decide on the evidence alone, and should not, if they are in doubt on the evidence, find against the will, by calling in aid the presumption (z).

When a will has been proved to have been once duly executed, and at the death of the testator cannot be found, the general presumption is, that it has been destroyed by the testator *animo revocandi* (a).

Thus where A. in 1856 duly executed a will, of which he kept possession: in 1861 a fresh will was drawn up for him, but was never finally settled; he subsequently referred to the executed will as being then in existence, and afterwards expressed his intention to destroy it, and to settle the new one, but died without having done so: after his death, the draft prepared in 1861 was found, but not the executed will:—Held that the executed will was revoked (b).

G. in 1855 wrote his will on six or seven unattached pieces of paper; at the foot of each sheet, he signed his name in the presence of two witnesses, who also subscribed their names in his presence: after G.'s death, two only of these sheets, viz. the 3rd and 4th, could be found, but they contained a disposition of part of G.'s

(z) *Elms v. Elms*, 27 L. J., P. & M. 34; *Podmore v. Whatton*, & M. 96; 1 Sw. & Tr. 155. 3 Sw. & Tr. 449.

(a) *Johnson v. Lyford*, 37 L. J., (b) *Mitcheson, In goods of*, 32 P. & M. 65; *Wood v. Wood*, 35 L. J., L. J., P. & M. 202.

property; on motion for a grant of administration with these two papers annexed, as being the will of G., it was held, 1st, that it must be presumed that G. destroyed the lost sheets intentionally; 2ndly, that as the last sheet contained the only signatures which were in compliance with the Wills Act, the whole will must be presumed to be revoked (c).

Since 1838, revocation by mutilation.

But the presumption of fact that a will known to have been in testatrix's custody and not forthcoming at her death, was destroyed by her *animo revocandi*, is a *primâ facie* presumption only, and may be rebutted by probable circumstances; among which, declarations of unchanged affection and intention have much weight: it is not necessary for the parties seeking probate, having proved the *factum* of the original instrument and given sufficient secondary evidence of its contents, to show how the original instrument was in fact destroyed or lost (d).

But though a testator has the power of revoking a will by destroying it, either himself or by his commands *during his life*, it seems he has no power to authorize a *post mortem* destruction of his will (e).

A codicil is *primâ facie* dependent on a will: thus, where a will and codicil to it have been in existence, and the will has been subsequently destroyed by the testator, the burden of proof is on the party setting up the codicil, to show that it was the intention of the testator that it should operate separately from the will; otherwise the presumption is that by the destruction of the will the codicil was revoked (f).

Effect of, on codicil.

So where A. executed a will containing certain bequests, and subsequently a codicil purporting to be a codicil to that will, the provisions of which were in no way dependent upon those of the will, and in all other respects

(c) *Gullan, In goods of*, 27 L. J., P. & M. 15.

(e) *Stockwell v. Ritherdon*, 6 No. of Ca. 414.

(d) *Pullen v. Pullen and others*, 1 Sw. & Tr. 55; 27 L. J., P. & M. 41.

(f) *Greenwood v. Cozens and others*, 2 Sw. & Tr. 364.

Revocation,
effect of, on
codicil.

he confirmed the will; afterwards, being offended with persons benefited by the will, he cancelled it *animo revocandi*:—The court refused to grant administration with the codicil annexed upon motion, where the parties interested in case of intestacy had not been cited. Semble, that the codicil was revoked (*g*).

On the other hand, a testamentary paper purporting to be a codicil to a will, but being substantially independent of it, is not necessarily revoked by the revocation of the will (*h*).

So a codicil executed before the revocation of the will, and independent of it, was admitted to probate, though the will was revoked (*i*).

Where A. made a will and a codicil thereto, which he retained in his own possession, he subsequently executed a second testamentary paper, which he also called a codicil, and this paper he gave to one of the legatees named therein; the will and first codicil were not forthcoming at his death:—Held, that as the second codicil had not been revoked by any of the modes indicated by the 20th section of the 1 Vict. c. 26, it was entitled to proof (*k*).

Where a testator having made his will in 1840, and in 1842 added two codicils thereto, in 1846 expressed his disapprobation of the will, which he threw into the fire, and where it was consumed, expressing at the time of his doing so his anxiety that the act should not affect the codicils, and subsequently expressing a belief that the codicils were operative instruments:—Held that the destruction of the will did not revoke the codicils (*l*).

Revocation—
dependant
relative.

The mere physical act of mutilation or destruction is equivocal; it is, when intentional, sometimes accompanied

(*g*) *Dutton, In goods of*, 32 L. J., P. & M. 137.

(*h*) *Ellice, In goods of*, 33 L. J., P. & M. 27.

(*i*) *Harris, In goods of*, 33 L. J., P. & M. 181.

(*k*) *Black v. Jobling*, 38 L. J., P. & M. 74; *Clogstoun v. Walcott*, 5

No. of Ca. 623, and *Grimwood v. Cozens*, 2 Sw. & Tr. 364, considered.

(*l*) *Clogstoun v. Walcott*, 5 No. of Ca. 623.

by the intention not only of destroying and annulling the mutilated document, but also of setting up some other will in its place; when therefore the two intentions are so linked together, as to lead to the supposition that the testator would not have done the one without also doing the other, and, by ignorance or accident, the intention, which accompanies the intention to destroy, fails to be carried out, then the doctrine of what is called “dependant relative revocation” arises, which is founded on a desire to carry out the testator’s intentions (*m*): and the Court holds that the condition or accompanying intention under which the testator destroyed the document, being unfulfilled, the act does not amount to an act of revocation.

Revocation—
dependant
relative.

As where a testator executed a will in 1864, revoking all former wills, and in 1865 destroyed this will, with an intention, expressed at the time, that he wished to substitute for it a will of 1862, which he held in his hand, it was held that the act of destruction by the testator was referable solely to his intention to validate the will of 1862, and that act being conditional, and the condition being unfulfilled, there was no revocation (*n*).

So where a testator destroyed his will, believing that it had already been revoked by a later will, which was in fact invalid, and the only evidence of his object in destroying it, was a declaration made at the time, that it was no use to keep it, as he had another:—Held that the will was not revoked (*o*).

Where A. duly executed a will and afterwards had it recopied with the exception of one bequest, she signed the second will in the presence of two witnesses, but it was not duly attested in consequence of the name of one of the witnesses, who was unable to write, being subscribed by the other witness; two years afterwards she cut out of the first will the names of the attesting witnesses without

(*m*) *Lord Thynne v. Stanhope*, Prob. 209; 35 L. J., P. & M. 100.

1 Add. 52.

(*o*) *Clarkson v. Clarkson*, 31 L.

(*n*) *Powell v. Powell*, 1 L. R., J., P. & M. 143.

Revocation—
dependant
relative.

stating her reason for doing so: both wills remained in her possession until her death:—Held that notwithstanding the time which had elapsed since she signed the second will, the reasonable presumption was that the testatrix mutilated the first will under the erroneous impression that the second will was valid, and therefore that on the principle of dependant relative revocation, the first will was not revoked (*p*).

But the declarations of a testator as to his intention, where relied on to show that the revocation was dependant, must accompany the act of destruction. For where a testatrix executed a will, which revoked an earlier will, and two years subsequently, while alone in her bedroom, she destroyed the later will and immediately afterwards told her daughter that she had done so, with the intention that the earlier will might take effect:—Held that the destruction of the instrument under the circumstances, amounted to an absolute revocation (*q*).

A. drew out for the deceased, on his instructions and at different times, three wills, each of which contained a revocatory clause; A. was himself benefited under the first two, but not under the last will; it appeared from the evidence of A. alone, that on an occasion, the three wills being before the deceased, the deceased selected the one of earliest date as that he desired to operate, and thereupon the other two were burnt either by deceased himself or by his orders and in his presence: it further appeared by the evidence of A., and in that he was surported by the attesting witnesses, that the will of latest date was not signed by the deceased, nor was his signature acknowledged in the presence of the witnesses, and that therefore it was not duly executed:—Held that the deceased died intestate; that where a testamentary paper is not in existence, and all the persons present, at an intended execution of it,

(*p*) *Middleton, In goods of*, 34
L. J., P. & M. 16.

(*q*) *Weston, In goods of*, 38 L. J.,
P. & M. 53.

agree that it was not duly executed, the court cannot, on a mere suspicion to the contrary, decree probate of it; in order to establish a case of dependant relative revocation, it must be shown by the evidence of disinterested witnesses, that the act of destruction of a will was referable wholly and solely to an intention to set up some other testamentary paper (*r*).

Revocation—
dependant
relative.

A. made a will in 1826, and another in 1851, inconsistent with the former; before his death he burnt the second will *animo cancellandi*, accompanying the act with declarations which showed that he supposed the will of 1826 had thereby been revived; it was held, first, that the earlier will was not revived, as, though made before the Wills Act, it could only be revived in the way pointed out by the act and not by the declarations of the testator; secondly, that the doctrine of dependant relative revocation did not apply to the burning of the later will, but that it was absolutely revoked:—Semble the doctrine of dependant relative revocation only applies where the revocation is to be dependant on a future event (*s*).

Revival.] A will now, when once revoked, can only be revived in the manner pointed out in the Wills Act (7 Will. 4 & 1 Vict. c. 26, s. 22), either by re-execution or by the execution of a codicil showing an intention to revive it.

B. in 1846 made a will, which he revoked by another will made in 1855; on his death the former will was found, but not the latter; it was held, first, that it must be presumed the deceased destroyed the missing will *animo revocandi*; secondly, that parol evidence of the contents of the missing will was admissible; thirdly, that the earlier will was not revived by the destruction of the will which had revoked it (*t*).

Where a testator made a will dated the 30th of June,

- (*r*) *Eckersley v. Platt and others*, L. J., P. & M. 84.
 36 L. J., P. & M. 7. (*t*) *Brown, In goods of*, 27
 (*s*) *Dickenson v. Swatman*, 30 L. J., P. & M. 20.

Revival.

1858, and destroyed it upon executing a second will in 1859, and afterwards made a codicil intending it to be supplementary to the will of 1859, but expressing it to be a codicil to my last will made on the 30th of June, 1858, the court granted probate of the will of 1859 and the codicil; there can be no revival of a will which has ceased to have both a physical and legal existence; *quære*: first, whether a will can be revived which is no longer *in esse*; secondly, whether evidence is admissible to explain the mistake or supposed mistake of a testator (*u*).

A testator by will made on the 30th of April, 1857, devised a freehold house to A. for life, and by a codicil thereto, made in September, 1857, he bequeathed her in addition a legacy of 200*l.*, and by another codicil made on the 13th February, 1858, he bequeathed her a leasehold house and the furniture and effects therein; on the 3rd of June, 1858, he executed a will which differed only from that of 1857 by the substitution of another person as one of the executors and residuary devisees and legatees, and which revoked all former wills; on the same day he re-executed the codicil of September, 1857, as a codicil to the will of 3rd of June, 1858; there was evidence that the will of 1858, which was not found after the testator's decease, had been destroyed by him in 1859, *animo revocandi*; on the 1st of June, 1860, the testator wrote to A. a letter which was duly executed as a will, stating that he had made a will and left A. a freehold house and furniture for life, and that he wrote the letter in confirmation of what he had already done. After his death the will of 1857 and the two codicils were found sealed up in an envelope endorsed in the handwriting of the testator, sealed June 13th, 1860:—Held that by the letter the deceased intended to confirm the testamentary papers found in the envelope, and that they and the letter were entitled to probate (*x*).

(*u*) *Rogers v. Goodenough*, 31 L. J., P. & M. 49.

(*x*) *McCabe, In goods of*, 31 L. J., P. & M. 190.

By 1 Vict. c. 26, s. 22, in order that a codicil should Revival.
revive a will which in any manner has been revoked it must show an intention to revive the same:—Held that such intention will not be shown by a mere reference to such will by date, but the codicil must contain express words referring to a will as revoked, and importing an intention to revive the same, or a disposition of the testator's property inconsistent with any other intention, or some other expression conveying to the mind of the court with a reasonable certainty the existence of the intention in question (*y*).

In order that a revoked will may be revived by a codicil since the Wills Act, an intention to revive it must appear from the contents of the codicil, and cannot be established by any act *dehors* the codicil; mere physical annexation, *e. g.*, the tying the will and codicil together, is not sufficient (*z*).

PROBATE HOW GRANTED.

Probate may be granted either in solemn form or in common form. "In probate of wills there is one form which is slight and summary for ordinary and undisputed cases, and another more formal by solemn decrees of the court." Sir Wm. Scott (*a*).

In Solemn Form.] Probate in solemn form is, with Effect of probate in solemn form.
some exceptions, conclusive on all who are parties to the proceedings or cognizant of them. The exceptions to its conclusive effect are generally where the decree has been obtained by fraud or collusion, or where a later will has been discovered. "A sentence obtained by fraud and collusion is no sentence; in order to make a sentence there must be a real interest, a real argument, a real prosecution, a real defence, a real decision; of all these requisites

(*y*) *May, In goods of*, 37 L. J., *ors.*, 30 L. J., P. M. & A. 77.

P. & M. 68.

(*a*) *Duke of Portland v. Bing-*

(*z*) *Marsh & ors. v. Marsh & ham*, 1 Hag. Con. R. 158.

In solemn form
when revocable
—collusion.

not one takes place in the case of a fraudulent and collusive suit: there is no judge, but a person invested with the ensigns of a judicial office is misemployed in listening to a fictitious case proposed to him; there is no party litigating, there is no party defendant, no real interest brought into question; and to use the words of a very sensible civilian on this point, '*fabula non iudicium hoc est; in scenâ, non in foro, res agitur*'" (b).

In the Duchess of Kingston's case, it seems the decision went on the double ground that the two suits were not between the same parties, and that evidence was admissible to show that the first decision was obtained by fraud and collusion (c).

Subsequent
will discovered.

Where on the 7th July, 1854, on appeal from the Prerogative Court, the judicial committee of the Privy Council (reversing the decree below) decreed probate of a will dated 1825, and subsequently, on the 7th October, 1854, a will of the testator dated March, 1851, having been discovered, an application was made to the judicial committee for probate thereof; such application was refused, as the original suit being concluded the jurisdiction of the judicial committee was exhausted, but the committee intimated that if a petition was presented to her Majesty to refer the matter specially to them, they would entertain the application; upon such petition being presented and referred, the committee revoked the probate of the will of 1825, and directed that the will of 1851 (which had been brought into the registry of the court for the purpose of the application), should be delivered out to the applicant, in order that she might take probate thereof in common form in the Prerogative Court of Canterbury (d).

In Common Form.] By granting probate in common

(b) *Wedderburn v. Sol.-Gen.*
in the Duchess of Kingston's case,
20 St. Tr. 478; quoted by Lord
Brougham in *Meddowcroft v.*

Huguenin, 4 Moo. P. C. C. 396.

(c) 20 St. Tr. 355.

(d) *Catto v. Gilbert*, 9 Moore,
P. C. C. 131.

form on affidavits, the court does not preclude any one interested in the property from contesting the paper at a future period (e). In common form.

Of what Probate granted.] Although a testamentary document may be entirely inoperative in itself, yet an executor may be entitled to probate of it, and in some cases it may be desirable to prove such a paper, as where a codicil, conditioned to take effect only on an event which does not happen, republishes a will, and is on that ground entitled to probate (f). In this case any defect in the execution of the will would be cured by the codicil, although the latter in itself has no operation. Of inoperative codicil.

A testator duly executed on the same day three testamentary papers; by the first he disposed of certain property in Canada, and appointed A. and B. executors; by the second he disposed of certain property in England, and appointed C. and D. executors; the third, which was substantially the same as the second, appointed no executors; the second and third papers purported to dispose of the residue, and did not expressly state that they were intended to dispose of the residue in England only; it was proved by parol evidence that the testator intended them to dispose of the residue in England only; probate was granted of the three papers, as together containing the last will of the deceased, to the executors named in the first and second papers (g). Will contained in several papers.

It will be seen, on reference to the succeeding pages, that probate is sometimes granted of more than the actual will, and that documents referred to in the will become incorporated with and form a part of the will, and as such obtain the probate of the court; on the other hand, as the court grants probate only of the *will* of the deceased, it by no means follows that probate is granted of the whole paper, and that portions of the document, added by mis- More or less than the actual paper.

(e) *Re Dyer*, 1 Hag. Ecc. R. L. J., P. & M. 171.

220. (g) *Nicholls*, In goods of, 34

(f) *Da Silva*, In goods of, 30 L. J., P. & M. 103.

Of what.

take, fraud, or the like, are left out, as forming no part of the testamentary intentions of the deceased.

As to this portion of the subject the rules are the same whether a will be dated before or after the 31st December, 1837 (*h*).

Incorporation of Documents.] If a will contain a reference to any document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the production of the document is required, with a view to ascertain whether it be entitled to probate; if not produced, its non-production must be accounted for (*i*). Such document means a document in existence at the time when the will was executed (*k*).

As a will is not necessarily contained in the testamentary paper which is attested and signed, but may constitute as a part of itself other papers by mere reference, the above rule is made. The rule, that the documents referred to must be documents existing at the time of execution of the will, is a repetition of the old law (*l*).

Of copy will.

Where the testator made his will in India, and deposited it with a bank at Calcutta; while temporarily resident in Scotland, he executed a codicil, in which he referred in distinct terms to a copy of the will: this copy he produced to the witnesses at the time he executed the codicil, and he deposited both papers in the hands of his executor:—Held that the copy was incorporated by the codicil, and probate of the copy, will and codicil was granted without production of the original will (*m*).

Of endorsement.

Testator wrote his will on the first side of a half-sheet of paper; there was an unfinished bequest in the body of the will, and this he completed on the back of the page,

(*h*) Rule 26, P. R., Non-C.; Rule 31, D. R.

(*i*) Rule 12, P. R., Non-C.; Rule 15, D. R.

(*k*) Rule 13, P. R., Non-C.; Rule 16, D. R.

(*l*) *Stockwell v. Ritturdon*, 1 Rob. 661; *Wilkinson v. Adam*, 1 Ves. & B. 445.

(*m*) *Mercer, In goods of*, 39 L. J., P. & M. 43.

marking by an asterisk the place where the indorsement was to be read into the will; the attesting witnesses did not see the indorsement, but there was evidence that it was written before the execution of the will; the court held that the indorsement formed part of the will, and ordered it to be included in the probate (*n*). Incorporation of indorsement.

Where there is reference, in a duly executed testamentary instrument, to another testamentary instrument imperfectly executed, but by such terms as to make it capable of identification, it is necessarily a subject for the admission of parol evidence, and such parol evidence is not excluded by 7 Will. 4 & 1 Vict. c. 26 (*o*). Parol evidence.

Where a testatrix wrote a letter addressed to her nephew, in which she gave directions as to her funeral, and as to the distribution of her property and signed it, but not in the presence of witnesses, and inclosed it in a sealed envelope; on a subsequent occasion, by the advice of A., the following words were written on the outside of the envelope, signed by the deceased and duly attested, "I confirm the contents written in the inclosed document in the presence of _____;" it was held that the words of this confirmation were sufficiently clear to allow evidence to be admitted to identify the document referred to, and that the evidence so admitted was sufficient for its purpose (*p*).

Where a married woman, having power under a settlement to make a will, made in 1851 a testamentary instrument in her own handwriting, which she intended to operate as a will, but which was not attested according to the requirements of 1 Vict. c. 26, s. 9; and in 1856, she duly executed a codicil, which was headed, "This is a codicil to my last will and testament:" this codicil contained no reference to the testamentary paper of 1851, which was

(*n*) *Burt, In goods of*, 40 L. J., P. & M. 26. (*p*) *Almosnino, In goods of*, 1 Sw. & Tr. 508; 29 L. J., P. & M. 46.
 (*o*) *Allen v. Maddock*, 11 Moore, P. C. C. 427.

Incorporation
of unattested
will.

not produced at the time the codicil was executed, but was found at her death in a trunk in her room in her residence, inclosed in a sealed envelope, on which was indorsed Mrs. Ann Foote's will; the codicil was found in a drawer in her bedroom, no other will or testamentary paper was found:—Held that as there was a distinct reference in the codicil to a last will and testament, and as *no* other will had been found, the testamentary paper of 1851 was, by parol evidence, sufficiently identified as the last will referred to by the codicil of 1856 (*q*). The words “ratify and confirm the indenture” are sufficient to incorporate an indenture recited and referred to in a codicil (*r*).

Of clause
omitted by
mistake.

Where the testator gave directions that his will, from which he had erased one clause, should be copied with the omission of that clause; in making the copy, other portions of the will were by mistake omitted and the imperfect copy was duly executed; both instruments remained in the testator's possession until his death, when the mistake was discovered; the court being satisfied by parol evidence of the circumstances under which the second instrument was executed, that the testator had executed it in the belief that it was an exact copy of the first with the omission of the erased clause:—Held that it did not revoke the first, and admitted both to probate as together containing the last will of the testator (*s*).

Of list of
articles.

Where a testatrix by her will directed her executors to distribute certain articles “according to any list or lists signed by me,” and subsequently executed two codicils: after the execution of the will and before that of the second codicil, the testatrix signed such a list, but it was unattested and was not referred to in either of the codicils:—Held upon the authority of the case of *The goods of Hunt* (*t*),

(*q*) *Allen v. Maddock*, 11 Moore,
P. C. C. 427.

(*s*) *Birks v. Birks*, 34 L. J.,
P. & M. 90.

(*r*) *Sheldon v. Sheldon*, 1 Robert.
81.

(*t*) 2 Robert. 62.

that the list was entitled to probate (*u*). But this case, as well as the case of *Hunt v. Hunt* (*v*) on which it was founded, appears now to be overruled. For where a will contained the following clause, "I request my trinkets shall be divided as I shall direct in a small memorandum:" after the death of the deceased an unexecuted memorandum in her handwriting disposing of certain trinkets was found, and it appeared that this was in existence before the execution of a codicil, but it was not referred to by it:—Held that the memorandum was not entitled to probate (*w*).

Incorporation
of list of
articles.

The deceased, by her will, gave to A. "all such articles "of silver plate and plated articles as are contained in the "inventory signed by me and deposited herewith;" a list of such articles, professedly the one referred to in the will, signed by the deceased at the foot of each page and at the end, but having on it a date on the last page later than the date of the will, was deposited with the will by the deceased at her bankers; in conversation with one of the witnesses for the execution, the deceased referred to this list, but it was not shown to the witnesses at the time of the execution of the will; the deceased subsequently executed a codicil, which described itself as a codicil to the will of such a date, but did not confirm it in direct terms:—Held that the will might be read as if it had been executed at the time of the execution of the codicil, and as the court was satisfied from the language of the will so read, that the list referred to was then in existence, and from the other evidence that it had been before that date signed by the deceased and deposited with her will, it might be taken to be incorporated therewith and be admitted to probate (*x*).

Where the deceased executed a will on the first side of a sheet of paper; on the back of the will was a codicil to

Erroneous
reference.

(*u*) *Stewart, In goods of*, 23

L. J., P. & M. 115.

L. J., P. & M. 94.

(*x*) *Baroness Truro, In goods*

(*v*) 2 Robert. 62.

of, 35 L. J., P. & M. 89.

(*w*) *Mathias, In goods of*, 32

Incorporation
—erroneous
reference.

which the signatures of the deceased and two witnesses were attached, but which had not been executed in accordance with the requirements of the statute; below this codicil, and partly on the third side of the sheet of paper, was another codicil duly executed: in this last document there was no other reference to the first codicil, and that a specific legacy given in such first codicil was revoked, the legatees named being misstated:—Held that as there was a reference, although in erroneous terms, to the contents of the first codicil in the one duly executed and they were on the same paper, the court would grant probate of both as incorporated (*y*).

Identity must
be clear.

But in order that an unattested paper may be adopted as part of a duly attested will, it must be referred to by the will in such a manner as shall, with the assistance of parol evidence, when necessary and properly admissible, leave no doubt as to its identity (*z*). And it must be so described in the will, as to leave no doubt in the mind of the court, that it is the paper writing referred to (*a*).

Identity
insufficient.

Where the will, if read as speaking at the date of the execution of the codicil, contains language which would operate as an incorporation of a document to which it refers, such document, although not in existence until after the execution of the will, is entitled to probate by force of the codicil. But where the reference in the will was to a future document, and the language of the codicil in which the reference was repeated was ambiguous and might be read as pointing either to an existing or future document, the court refused to incorporate unexecuted papers written by the testatrix between the date of the will and codicil (*b*).

Where in 1856 G. made and executed a will, in it was the following bequest:—"I give to S. F. some household

(*y*) *Widdrington, In goods of*,
35 L. J., P. & M. 66.

(*z*) *Dickinson v. Stidolph*, 11
C. B., N. S. 341.

(*a*) *Brewis, In goods of*, 3 Sw.
& Tr. 473; 33 L. J., P. & M. 124.

(*b*) *Reid, In goods of*, 38 L. J.,
P. & M. 1.

“furniture which she have got a list of;” when the will was executed no such list was attached to it, nor did it appear that any was produced; S. F. deposed that on the deceased’s making a previous will in 1852, he told her that it was his intention to leave her some portion of his furniture, and that he had made a list thereof which he desired she would keep; that he then handed her a list, which remained in her possession till he made his will in 1856, when he desired her to keep it; that the deceased never gave her any other list. The list referred to by S. F. commenced thus—List goods I give to my godson, J. E. F.; and then specified divers articles of household furniture, and also some kitchen utensils, cutlery, crockery, plate, books, a watch, pictures and musical instruments. J. E. F. was the son of S. F.; on motion for a grant of administration the court held that the list of household furniture produced was not incorporated in the will, its identity with that mentioned in the will not being sufficiently proved, and rejected the motion (*c*).

Incorporation
—identity
insufficient.

The deceased in his will left an annuity to his wife, to “be paid out of the rents and other monies received by my “executors as hereunder named.” . . . and at her death the whole to be divided by my executors as hereinafter described; no name of an executor was mentioned in the will, but beneath the signature of the deceased appeared a clause in his handwriting which contained the name of two persons as executors; there was direct evidence that this clause was written before the deceased executed his will:—Held that the proof was not sufficient to satisfy the court that the clause below the signature was the very thing described by the words in the will relating to executors, and that it could not be included in the probate (*d*).

“Executors
hereunder
named.”

Similarly, where A. inclosed and sealed up in an envelope two sheets of paper, on which she had in writing expressed her wishes as to the disposal of monies belonging

(*c*) *In the goods of Greaves*, 28 L. J., P. & M. 81; *Woods, In goods of*, 37 L. J., P. & M. 23; 1 L. R.,

(*d*) *Dallow, In goods of*, 35 Prob. 56.

Incorporation
insufficient.

to her, and of her jewellery and other personal effects; these papers were not duly executed; on the inner side of the envelope she wrote as follows:—"it is my wish for my husband to administer the monies, and for the smaller bequests B. will attend to them." This memorandum was signed by A. in the presence of two witnesses; the only surviving witness deposed that, after the execution, two similar sheets of paper to those found therein were placed and sealed up in the envelope by A., but that she could not further identify them; the envelope had been opened after the execution:—Held that as the words in the memorandum did not refer to any paper as existing, or if so, not in such terms as to enable the court to identify it, and as the evidence did not show that the papers found in the envelope were the same as those placed there after the execution by A., the papers so found inclosed were not entitled to probate, and that without them the memorandum was not testamentary (*e*).

Where the deceased wrote out a list of legacies on three pieces of paper; the first was a sheet paged consecutively on the four sides and filled with writing; the second was also a sheet, but the writing only covered the first side, which was page five; the third was a half sheet not paged; the first and third papers were dated with different dates; the second was not dated. On a day subsequent to the latest date on these papers the deceased signed her name in the presence of two witnesses at the foot of the writing on each piece of paper, but the witnesses by her direction only signed their names on the first sheet:—Held that the other two pieces could not be included in the probate (*f*).

A., being ill in bed, sent for an attorney's clerk, to whom he gave verbal instructions for the preparation of his will; the clerk made a memorandum of part of them in his presence and trusted to memory for the remainder; before the will could be prepared A. became suddenly

(*e*) *Straubenzer v. Moriek*, 32 L. J., P. & M. 21, 3 Sw. & Tr. 6.
(*f*) *Pearse, In goods of*, 36 L. J., P. & M. 117.

worse, and he then executed a paper in which he desired that the "instructions given to the clerk" should be carried out:—Held (on motion) that the mere fact of the clerk writing in the presence of A. did not make the memorandum a written document of which A. had cognizance, and that it was not incorporated by the reference to the "instructions" in the paper (*g*). Incorporation insufficient.

Mere inclosure in the same envelope is not sufficient; for where L. signed her name to a testamentary paper, but not in the presence of two witnesses, nor did she acknowledge her signature in their presence, and afterwards duly executed another paper, in which she nominated A. executor, and empowered him to draw her money, and employ it for her after her decease in all things necessary; the first paper was lying before her when she executed the latter, and she placed both of them in one envelope and delivered it to A., in whose possession it remained till the death of the deceased; it was held, that the first paper was not so referred to in the latter that it could be incorporated with it or admitted to probate (*h*). Inclosed in one envelope.

Nor merely by being on the same paper: as where A. executed his will in February, and a codicil on the same paper in December: below the signature to the will, and before the commencement of the codicil, appeared a memorandum, which, from the evidence of the solicitor who prepared the will, had been written on the paper before the execution of the will:—Held that the memorandum, being no part of the will as originally executed, was not entitled to probate, by reason of the duly executed codicil of a subsequent date, such codicil merely referring to the will (*i*). On same paper.

A testator left a will and five codicils, all duly executed; the earliest of these codicils, dated March 25th, 1848, purported to be a second codicil to the will, and Tied up with will.

(*g*) *Pascall, In goods of*, 38 P. & M. 105.

L. J., P. & M. 3.

(*i*) *Willmott, In goods of*, 1 Sw.

(*h*) *Luke, In goods of*, 34 L. J., & Tr. 36.

Incorporation
insufficient.

referred to and confirmed a first codicil; there was no evidence that any codicil had been executed before that of March 25th, 1848, but it appeared that in that month the solicitor of the testator had prepared a draft codicil and forwarded it to the deceased for execution, and that when he prepared the codicil of March 25th, 1848, he was under the erroneous impression that the draft codicil had been executed; after the testator's death the draft codicil was found tied up with the other testamentary papers; the court refused to grant probate of the draft codicil, on the ground that it was not sufficiently identified as the paper referred to by the testator (*k*).

A. executed, in 1866, a will which referred to written directions which he intended to form part of the will; this paper, which began—"To my executors; I have written the following directions for your guidance with respect to many things and goods not mentioned in my will, which said will very probably will be found at William Weedon's, Esq., solicitor,"—was further subsequently executed by him according to the provisions of the Wills Act; in 1868 he executed a second will, which revoked all previous wills, and contained the following clause:—"All my books, pictures, sketches, guns, rods, goods and chattels, in and about the rooms I shall occupy at the time of my decease, I wish my executors to dispose of faithfully and conscientiously according to the written directions left by me and affixed to this my will, trusting, as I unhesitatingly do, in their honour and integrity;" nothing was affixed to the will which remained in the possession of Mr. Weedon, the solicitor who prepared it, and the only paper of written directions forthcoming was that which the testator intended to form part of the will of 1866:—Held that it was not incorporated by the reference in the will of 1868, and that as an executed testamentary paper, it was revoked by such will (*l*).

(*k*) *Allnutt, In goods of*, 33 L. J., P. & M. 86.

(*l*) *Gill, In goods of*, 39 L. J., P. & M. 5.

The duly executed instrument must refer to the paper *as then existing*. For where a testatrix bequeathed personality to certain legatees "in the confidence that they will distribute it as I may by memorandum or deed, or otherwise, direct;" she afterwards executed a codicil, revoking some legacies, but confirming her will in all other respects; after her death the will and codicil, and several unattested memoranda in her handwriting, containing directions for the distribution of the personality, bearing dates later than the will and earlier than the codicil, were found tied up together:—Held that the memoranda could not be admitted to probate (*m*).

Incorporation insufficient.
Paper must be referred to as *existing*.

Nor can this defect, inherent in the instrument, be remedied by parol evidence; for such is not admissible for the purpose of incorporating, in a duly executed testamentary paper, papers not duly executed; unless the duly executed paper refers to some written document *as then in existence*, and describes it in such a manner as to enable the court to ascertain its identity. As where a testamentary instrument was written on the first three pages of a sheet of paper; the portion on the first page only was duly executed, and the only reference it contained to any other paper was the following clause:—"I bequeath the following sums to my sons and daughters hereunder named, and I declare the under-mentioned sons and daughters to be my executors;" no names were mentioned in the first page, but on the second and third pages there were unexecuted bequests and the names of sons and daughters:—Held that there was not a sufficient reference in the duly executed portion of the paper to render parol evidence admissible for the purpose of incorporating in it the portion not executed (*n*).

Parol evidence inadmissible.

Similarly where a testatrix left the residue of her property to trustees, save and except such articles of furniture

(*m*) *Lancaster, In goods of*, 29 L. J., P. & M. 155.

(*n*) *Watkins, In goods of*, 35 L. J., P. & M. 14; 1 L. R., Pro. 19.

Incorporation
insufficient.

in her house at the time of her death “as may be ticketed, “or may be described in a paper in my own handwriting, to “show my intention regarding the same.” The testatrix, at the time she instructed her attorney to draw a will, produced to him two lists, which she informed him were the papers she intended to refer to, but they were not, at the time the will was executed, shown to the witnesses:—Held that as the will did not describe the papers as being then in existence, the court could not receive parol evidence of the fact, and could not allow them to be incorporated in the probate (*o*).

Where a will referred to a paper as not then existing, the court refused to incorporate the paper with the will, although the paper and the will were written on the same day (*p*).

Bequest
omitted.

And where a bequest (in 1818) of residue was omitted, through the error or inadvertence of the solicitor, to be inserted in a testamentary instrument, the court refused to admit such bequest to probate (*q*).

Of course, in a will made since the 1 Vict. c. 26, a contention to admit such an addition to probate could not be sustained for a moment.

Paper must be
operative.

Moreover, the document referred to must be such as actually to affect the operation of the will at law or in equity. For where A. made a will in November, 1861, which contained a clause, “I make no specific bequest to my brother’s children, &c. Upon this subject, I refer my wife to my annulled will, dated the 11th of February, 1861;” the annulled will contained no bequest to these children, but in it the testator stated that in the present aspect of affairs, there was every prospect that they would be left well provided for; but that if any reverse should overtake them, he trusted and felt sure that his wife would share her all with them; upon motion for probate of the

(*o*) *Sunderland, In goods of*, 1 407; 17 L. T., N. S. 619.
L. R., Pro. 198; 35 L. J., P. & M. 82. (*q*) *Rockell v. Goudé*, 3 Phill.
(*p*) *Sims, In goods of*, 16 W. R. 141.

will of November, 1861:—Held that the annulled will did not raise any implied trust in favour of the said children, and that, therefore, it need not be embodied in the probate (r). Incorporation insufficient.

But where an informal testamentary paper is incorporated with an instrument duly executed, the informality is cured, and the informal paper is rendered valid by the duly executed instrument (s). Effect of.

The points deducible from the above cases seem to be:—1st. The testamentary instrument must clearly describe the document proposed to be incorporated, but the document may be *identified* by parol; 2nd. The testamentary instrument must describe it as *already existing*—if defective in this, the fact cannot be supplied by parol; 3rdly. When duly incorporated, the paper, however informal, becomes equally valid with the instrument with which it is incorporated, but it must be an *operative instrument*.

Where probate is granted of a married woman's will, made by virtue of a power, or administration with such will annexed, the power under which the will purports to have been made must be specified in the grants (t). Powers of a married woman must be specified.

This rule is in accordance with the old practice. Where M. was alleged to have duly executed a will, during coverture, in pursuance of a power, and died a widow without any known relation: the crown applied for administration, with her will annexed, but because neither the power, nor a copy of it, was before the court, the motion was refused (u). Will of married woman.

Where a married woman who has a power of appointment makes a will, in which she disposes not only of the property which is subject to her appointment, but also of other property over which she had no power of disposition, and appoints her husband executor, the instrument, if Deeds referred to.

(r) *Ouchterlony, In goods of*, 32 L. J., P. & M. 140. (t) P. R., Non-C. 15; D. R. R. 18.

(u) *Monday, In goods of*, 1 Curt.

(s) *Allen v. Maddock*, 11 Moore, 590. P. C. C. 427.

Deeds referred to. proved by her husband, will operate as to the latter property as a will made *ex assensu viri* (*x*). In such a case, as to the property beyond her power of disposition, there can be no power (except the husband's assent) which can be specified.

Occasionally, however, these rules (*y*) may be relaxed, where the deeds are of great length, and the embodying of them in the probate would involve great expense for little purpose. As where A. by his will bequeathed certain leaseholds to trustees, upon the same trusts as were declared by a settlement, with a slight exception, the whole of these leaseholds were included in the settlement, which was of great length; the court granted probate, without requiring the settlement to be embodied in it, upon an affidavit being filed in the registry stating the existence of and describing the settlement (*z*).

Nor where the document referred to refers entirely to realty, and the parties in whose hands it is refuse to produce it.

As where a testator devised his real estate to A. and B., to such uses, &c., as were declared by a certain deed of settlement, and directed that they should stand possessed of his leasehold estate for such trusts, &c., as should as nearly correspond with the uses declared as to his real estate, as the different tenure and quality of the premises and the rules of law would permit; the deceased left no leasehold estate, and the trustees of the settlement refused to produce it:—Held that probate of the will might be granted without including in it any portion of the settlement (*a*).

A testator bequeathed the residue of his estate to trustees, upon the same trusts as those contained in a deed of settlement made between third persons, and in which the testator

(*x*) *Ex parte Fane*, 16 Sim. 406. *goods of*, 32 L. J., P. & M. 121.

(*y*) Rules 12, 13 and 26, P. R., (*a*) *Dundas, In goods of*, 32 Non-C.; Rules 15 and 16, D. R. L. J., P. & M. 165.

(*z*) *Marquis of Lansdowne, In*

had no interest. The court, upon an affidavit that the persons, in whose possession the deed was, refused to produce it, decreed probate without requiring a copy of the deed to be inserted therein (*b*). Deeds referred to.

And where reference was made in a will to a deed of trust so as to make it part of the will of the testator, and it was necessary that the deed should be retained in the possession of the trustee, who was also the executor, to enable him properly to execute his trust, a notarial copy was directed to be left in the registry, and probate was granted of the will, and of a notarial copy of the deed (*c*).

On the other hand, as the court only grants probate of the will of the deceased, it does not necessarily follow that probate is granted of all the *writing* on the testamentary paper. Where a clause was introduced into the instructions for the will, by the express direction of the testator, but by the time it was added he was dead, Sir J. Nicholl struck out the clause, and the will was proved without it (*d*). Not of all the writing.

Part of a will may be established, and part held not to be entitled to probate (*e*). This was a case prior to the present Wills Act, when the formalities required by that statute were not necessary; still it is possible that cases might occur, even since the statute, of a similar nature, although such cases must now be comparatively scarce.

Where an old woman had nearly lost her eyesight, and the attorney who drew the will fraudulently inserted the residue to himself, and under different pretences kept the will back from the testatrix, the court, on receiving parol evidence of the facts, ordered the clause as to the residue to be struck out (*f*). Clause introduced by fraud.

Where a clause is introduced in a testamentary paper *Per incuriam*.

- (*b*) *Sibthorp, In goods of*, 35 529.
- L. J., P. & M. 73. (*e*) *Billinghurst v. Vickers*, 1
- (*c*) *Dickens, In goods of*, 3 Curt. Phill. 187.
- 60. (*f*) *Barton v. Robins*, 3 Phill.
- (*d*) *Nathan v. Morse*, 3 Phill. 455.

Of less than
the writing.

Codicil written
on deed by
mistake.

per incuriam, and the deceased executes the paper, not having giving any instructions for, and being ignorant of the existence of such clause, it forms no part of the will of the deceased, and probate will be granted of the remainder of the paper omitting the clause (*g*). But in the absence of fraud, the execution of a will by a competent testator is conclusive evidence that he approved the contents thereof, if at the time of execution they were brought to his notice. A competent testatrix executed a codicil which had been previously read to her, containing a clause which the solicitor, who prepared the codicil, stated that he inserted inadvertently and without instructions from the testatrix:—Held that the court had no power to exclude the clause from the probate (*h*). Where, however, at the foot of a deed, to which the deceased was a party, but which disposed of no property after her death, the following document, duly executed as a will, was written:—"I do add unto my will this codicil, hereby revoking any other codicil or codicils heretofore made by me: I constitute and appoint my said son, A. G., a trustee under the deed, my sole and only trustee and administrator under my will." When the deceased executed this document, she said, pointing to the deed, "this is my will." Upon motion for a grant of probate of the deed and codicil to A. G., as executor:—Held, first, that the deed, as it was not of a testamentary nature, was not entitled to probate; secondly, that as there was no will, A. G. was not executor; thirdly, that as the codicil, though it disposed of no property, revoked other codicils, administration with it annexed should be granted to the next of kin (*i*).

A residuary legatee, who was present at the execution of a will in which no executor was appointed, wrote her name, after the instrument had been signed by the testator

(*g*) *In the goods of Thos.* 35 L. J., P. & M. 116.

Duane, 2 Sw. & Tr. 590; 31 L. J.,
P. & M. 173.

(*i*) *Hubbard*, *In goods of*, 35
L. J., P. & M. 27.

(*h*) *Guardhouse v. Blackburn*,

and attesting witnesses, underneath the attestation clause, at the request of one of the witnesses:—Held that the court having to determine to whom the grant of administration, with the will annexed, should go, it was the duty of the court to inquire in what character the legatee had signed the paper; and the court being satisfied from the evidence that she had not signed the will as a witness, her signature was omitted from the grant; but the court required, before making an order for the omission of her signature from the probate, that a notice to show cause should be served upon the next of kin (*k*).

Of less than the writing.

Signature of executor omitted from probate.

Where B. made her will in the presence of C. and D., who subscribed the same; subsequently E., an executor and legatee in the will, at the request of the testatrix, signed his name, to signify, as suggested, his acceptance of the executorship; the court rejected a motion praying to omit E.'s name in the probate (*l*).

But where testator executed a will on February 13th, 1864, and another on June 24th, 1865, revoking all former wills, he afterwards executed a codicil which purported to be a codicil to his will, dated February 13th, 1864, and, after devising some property, confirmed his said will; the solicitor who prepared the codicil had inserted the date of the first will under the supposition that it was the last will; there was nothing in the codicil which showed an intention to revive the first will:—Held that the second will and codicil were entitled to probate (*m*).

Mistake in reference.

The court granted probate of the draft of a lost will, being satisfied by the evidence produced that it was in existence at the time of the death of the testatrix, and that it had been either suppressed or destroyed by the next of kin, who opposed the application for probate, and condemned the next of kin in costs (*n*).

Of lost will granted.

(*k*) *In the goods of Shearman*, 200.

38 L. J., P. & M. 47; 1 L. R. Prob. 166.

(*m*) *Anderson, In goods of*, 39 L. J., P. & M. 55.

(*l*) *In the goods of Jane Forrest*, 2 Sw. & Tr. 334; 31 L. J., P. & M.

(*n*) *Podmore v. Whetton*, 33 L. J., P. & M. 143.

Lost will.

But the court will not grant probate of the contents of a lost will, unless there is very cogent evidence that such a will did exist, and that it was in existence at the time of the death of the testator (*o*).

Semble, that probate will not be granted of an alleged copy of a will, which has been intentionally destroyed since the death of the testator, upon the evidence of the person who is solely interested in establishing it, and who himself destroyed the original (*p*).

Nor will it be granted *on motion* of a draft of a will, which has been intentionally destroyed (*q*).

As a general rule, the court will not grant probate on motion of the draft or contents of a missing will. But where it clearly appeared on affidavit that the testator had duly executed a will, of which a draft was in existence; that the will had been destroyed without any fault of the person who had the custody of it, and the persons who were entitled in distribution filed a proxy of consent; the court on motion granted probate of the draft (*r*).

Of codicil to
lost will.

Probate will be granted of a codicil to a will, when the will cannot be found, if the court is satisfied by the dispositions of the codicil that the testator intended that it should operate independently of the will (*s*).

Interlineations, &c.] For those interlineations and alterations which appear in wills, dated prior to the 1st January, 1838, see Rules 25, P. R., Non-C., and 30, D. R. It will be seen that owing to the operation of the statute (*t*) there are very important distinctions in the effect of interlineations, &c., made prior to the statute from those made subsequently.

If the will is dated before 1838, and the interlineation,

(*o*) *Wharran v. Wharran*, 33 L. J., P. & M. 75.

(*p*) *Moore v. Whitehouse*, 34 L. J., P. & M. 31.

(*q*) *Body, In goods of*, 34 L. J., P. & M. 55.

(*r*) *Barber, In goods of*, 36 L. J., P. & M. 19.

(*s*) *Greig, In goods of*, 35 L. J., P. & M. 113.

(*t*) 1 Vict. c. 26, ss. 9 and 21.

&c., is also shown, or can from the circumstances be presumed to be before that year, then the will is subject to Rules 25, P. R., Non-C., and 30, D. R. The important object to ascertain is the date of the interlineations; for even if the will is dated before, and the interlineation, &c., is after, the statute applies, as obliterations and alterations made subsequently to the 1st January, 1838, in a will of previous date, are within the provisions of this section (u). Interlineations
or alterations,
1 Vict. c. 26,
s. 21.

But unattested alterations in the handwriting of the testator, in a will made before the 1st January, 1838, were, in the absence of any evidence as to their date, presumed to have been made before the act came into operation (x).

In the case of these wills, where the will and interlineation, &c., existed before the 1st January, 1838, such interlineation, &c., will operate:—

1. Where made by the testator himself, as no signature or attestation is requisite for these wills, it is immaterial when the testator made the interlineation, &c., provided it be before the 1st January, 1838. In this case, however, the handwriting must be proved by the affidavit of two witnesses:
2. When made by another person and known to and approved of by the testator. This must be proved by affidavit:
3. Where they existed in the paper at the time it was found in the repositories of the testator. The rules in this case are more guarded, and only say that proof by affidavit of this fact *may, under circumstances*, be sufficient (y).

As to interlineations, alterations, erasures and obliterations which appear in wills dated since 1st January, 1838, see Rules 8, 9, 10 and 11, P. R., Non-C., and 11, 12, 13

(u) *Brooke v. Kent*, 3 Moore, P. C. C. 334; see also Rule 25, P. R., Non-C.; Rule 30, D. R. *Pechell v. Jenkinson*, 2 Curt. 273; *Pennington, In goods of*, 1 No. of Ca. 399.

(x) *Streaker, In the goods of*, 28 L. J., P. & M. 50; see also (y) See Rule 25, P. R., Non-C.; D. R. 30.

Interlineations
in wills dated
since 1838.

and 14, D. R., and 1 Vict. c. 26, s. 21. With respect to these wills the law is very different, owing to the express provision of the statute, as well as the general scope of recent legislation in providing one uniform method of execution for all wills. .

If the interlineations or alterations have been made subsequently to the execution of the will, they are invalid, and probate will be granted as though they did not exist; that is to say, they will not appear on the face of the probate, except in three cases:—

1. Where the interlineations or alterations have themselves been afterwards executed and attested in the same way as the original will:
2. Where the will has been executed again subsequently to their having been made (in this case they can hardly be said to have been made subsequently to the execution of the will):
3. Where a codicil has been subsequently executed.

In all these cases the interlineations and alterations become a part of and incorporated with the will,—in fact, they are the will.

If, however, they existed in the will at the time of its execution, they are as much a part of the will as any other; but this must be shown, and it may be done, either by affidavit of their having existed in the will before its execution, or by such interlineations or alterations being duly executed, or being recited or otherwise identified by the attesting clause. This stringent rule does not apply where the alterations are merely verbal, or where they are of small importance *and* evidenced by the initials of the attesting witnesses (z).

Interlineation,
what is.

The mere circumstance of the amount, or the name of a legatee, being inserted in different ink and in a different handwriting, does not alone constitute an obliteration, interlineation or other alteration within the meaning of the

(z) Rule 11, P. R., Non-C.; Rule 14, D. R. 1862.

statute, nor does any presumption arise against a will being duly executed as it appears. The case is different where there is an erasure apparent on the face of the will, and that erasure has been superinduced by other writing; under such circumstances the *onus probandi* lies upon the party who alleges such alteration to have been done prior to execution, to prove by extrinsic evidence that the words were inserted before execution, and that they had the sanction of the testator (*a*).

Interlineation,
what is.
Erasure.

Where a will contained alterations and erasures affecting the amount and objects of the testator's bounty, the existence of which at the time of the execution the attesting witnesses could not depose to in the absence of all direct evidence as to the alterations and erasures, the presumption of law is that such alterations and erasures were made after the execution of the will (*b*).

Presumption,
where no
explanation.

Where a will seemed to have been first written in pencil and afterwards traced in ink, but not completely, words in some places being written in ink above, and apparently in substitution for the pencil writing, and in other parts the pencil writing standing alone, the court declined to include the pencil writing in the grant (*c*).

Pencil writing.

Where A. after the 1 Vict. c. 26 made a will, which was written on the first and third pages of several sheets of note paper; at the bottom of one of these pages were the words and mark: "I leave the whole of my property to the following religious societies, viz., X to be divided in equal shares among them." On the top of the opposite page was a similar mark to that following the viz., and the names of four religious societies. There being no evidence that the names of the societies were written before the execution of the will, the court, considering them to be interlineations, excluded them from probate (*d*).

(*a*) *Greville v. Tyler*, 7 Moore, P. C. C. 320.

(*c*) *Bellamy, In goods of*, 14 W. R. 501.

(*b*) *Cooper v. Bockett*, 4 Moore, P. C. C. 449.

(*d*) *White, In goods of*, 30 L. J., P. & M. 55.

Interlineation. Where a will contained several unattested interlineations, most of them of single words, each of which was required to complete the sentence to which it belonged; they were apparently written with the same ink and at the same time as the rest of the will, but at the time of execution the body of the will was covered up by the testatrix, so that the witnesses could not see whether the interlineations were there or not; the court held that it was not bound to presume that these interlineations were made after execution, and included them in the probate (*e*).

Where some trifling alterations and interlineations appear on the face of a holograph will, and there was no evidence whether they were written before or after the execution, except the affidavit of an expert that, in his opinion, they were written at the same time as the rest of the will, the court admitted them to probate (*f*).

Where A. on the 28th of April, 1847, executed a draft will, in which after his death were found interlineations and cancellations, some in ink and some in pencil; in May, 1847, he executed an engrossed will, and in 1854 he executed a codicil which purported to be a codicil of the will of April, 1847; it appearing that the engrossed will was copied from the will of April, 1847, and that it corresponded with it as altered in ink, and consequently that the latter will was so altered before the date of the codicil, the court granted probate of the will of April, 1847, as altered in ink, and of the codicil of 1854 (*g*).

**Alteration on
face of will.**

Where, on the testator's death, an alteration appeared in a will, which, during his lifetime, was in the custody of the writer (one of the executors), who swore such alteration was made with the testator's concurrence, but gave no further explanation and declined to propound the will

(*e*) *Cadge, In goods of*, 1 L. R., L. R., Pro. 307; 36 L. J., P. & M. Pro. 543; 37 L. J., P. & M. 15; 24.
 16 W. R. 406; 17 L. T., N. S. 484. (*g*) *Wyatt, In goods of*, 31 L. J.,
 (*f*) *Hindmarsh, In goods of*, 1 P. & M. 197.

so altered, the court assigned the executors to take probate of the will in its original state: the residuary legatees on being personally cited to propound the will, or to show cause, &c., not appearing (*h*). Alteration, &c.

Where some alterations, having been made in a will subsequent to execution, the testator and attesting witnesses traced the former signatures with a dry pen, and the attesting witnesses wrote their initials in the margin opposite each alteration:—the court held that these initials were no evidence of a due execution of the alterations, and refused to admit them to probate (*i*). Alteration and re-execution.

A line drawn through with pencil is not an obliteration, but is merely regarded as something deliberative (*k*). Obliteration, &c., what is.

Where the testatrix, after the execution of her will, erased certain parts thereof, substituting in their places other words, probate was granted of the will with those parts erased in blank, the original words not being discernible on the face of the paper (*l*).

Upon the death of A., a will was found in which a legacy to B. was erased, but so as to be legible; one of the attesting witnesses stated that the erasure was made before the execution of the will: the other witness had no recollection on the subject; and evidence was given tending to show that the erasure was made after execution. The court upon the balance of the evidence, being of opinion that the erasure was made after execution, granted probate, without the erasure: *quære*, whether declarations of a testator made after the execution of a will are admissible in evidence to show that an erasure was made after execution (*m*).

Where the testator, after the execution of his will, obliterated the name of the executor, and substituted another, having previously expressed his intention so to do, and

(*h*) *Parker v. Hickmot*, 1 Hag. 39.
Ecc. R. 211.

(*i*) *Cunningham, In goods of*, 29 L. J., P. & M. 71.

(*k*) *Francis v. Grover*, 5 Hare,

(*l*) *In goods of Eliz. S. James*, deceased, 1 Sw. & Tr. 238.

(*m*) *In the goods of Hardy*, deceased, 30 L. J., P. M. & A. 142.

Alteration, &c. the alteration was not attested, the court directed the original name to be restored to the probate, having been satisfied by evidence *aliunde* what the original name was (*m*).

Where the name of one of the attesting witnesses to a will was written on an erasure, but it appeared that the will had been duly executed and attested, and that subsequently the attesting witness's name had been erased by the testator and had at his request been re-written by the attesting witness, the court, on motion, granted probate to the widow on affidavits that she and two infant children were the only persons entitled in distribution, and that notice had been given to the children (*n*).

Fac-simile.

Sometimes also obliterations and the like appear on the face of the original, and it is directed by the court that the probate be given in *fac-simile*, that is, the peculiarity, whatever it may be, is imitated on the face of the probate.

Where three persons were present and saw the deceased sign a will and codicil, and two of them signed as attesting witnesses: immediately after they had signed, the signature of one of them was struck through, and the deceased acknowledged his previous signature and the third person signed as an attesting witness; it was held the name, which had been struck through, could not be omitted from the probate, and probate was ordered in *fac-simile* (*o*).

The court is sometimes unable to distinguish how much of the alleged writing constitutes the actual will of the deceased. In such cases it is usual to allow the probate to be drawn in the form exactly similar to the alleged writing, in what is called *fac-simile*. As where a will, on the face of it, had been executed in 1858, and subscribed by two legatees named in it as witnesses, and was re-executed in 1860, and attested by different witnesses, and after the death of the testatrix was found with the first attestation clause and the names of the witnesses to it can-

(*m*) *Harris, In goods of*, 29 L. J., L. J., P. & M. 170.

P. & M. 79; 1 Sw. & Tr. 536.

(*o*) *In the goods of Raine, de-*

(*n*) *Colman, In goods of*, 30 ceased, 34 L. J., P. M. & A. 125.

celled, but there was no evidence to show the date of the cancellation: the court refused to exclude the part cancelled from probate, and directed the probate to go in *fac-simile* (*p*).

Again, where R. executed his will and a codicil thereto in the presence of three witnesses, two of whom subscribed their names as such to both instruments; immediately afterwards, before any person had left the room, R. having been informed that one of such subscribed witnesses would forfeit her interest under the will, ordered her name to be struck through, and the third witness to sign the will and codicil, which was done:—Held that the court could not allow the probate to issue with the omission of the name struck through, but might permit it to be taken in *fac-simile* (*q*).

Where a testatrix, after the execution of her will, erased certain parts, substituting in their places other words, probate was granted of the will with those parts erased in blank, the original words not being discernible on the face of the paper, and there being no evidence to show what they were (*r*).

As the statute 1 Vict. c. 26 caused a great alteration in the form required for revoking a will, different rules are applicable to wills made prior to that act, which have an appearance of an attempted cancellation, from the rules (*s*) which are applicable to wills made since; provided such attempted cancellation took place prior to the statute, as it was not the intention that wills executed before the 1st January, 1838, should be exempted from the provisions of the statute with respect to any act done to such wills after that date (*t*).

(*p*) *Smith, In goods of*, 3 Sw. Tr. 238.
& Tr. 589; 34 L. J., P. & M. 19.

(*q*) *Raine, In goods of*, 34 L. J., 1838, Rule 14, P. R., Rule 30, D. R.
P. & M. 125.

(*r*) *James, In goods of*, 1 Sw. & 768.

(*s*) Before 1838, Rule 24; since 1838, Rule 14, P. R., Rule 30, D. R.
(*t*) *Hobbs v. Knight*, 1 Curt.

Appearance of paper.

The next questions which arise are:—

1. *To whom* is the grant of probate to be made?
2. *When?*
3. *How* or the manner and practice by which probate is obtained?

Who may
prove.

To whom.] The persons entitled to probate are those and those only who are appointed executors. The restrictions as to what persons the law refuses to allow to become executors are very few: felons (*u*), bankrupts (*x*), femmes covert (*y*), infants (*z*) even in *ventre sa mère!* (*a*), may all be executors; though with regard to infants the 38 Geo. 3, c. 87, s. 6, provides that if an infant be appointed sole executor he is disqualified during his minority, and administration, *testamento annexo*, is to be granted to his guardian, or such other person as the court thinks fit, until the executor reaches the age of twenty-one.

Executors' dis-
qualifications.

Practically, the only persons who are incapable of being executors are lunatics and idiots, as well because they are unable properly to discharge the duties of the office, as also to determine whether or not they will take on themselves the burden of it (*b*). However, mere weakness of mind, especially if such were known to the testator, is insufficient (*c*).

The appointment of executors may be either nominate, *i. e.*, by name, or according to the tenor, *i. e.*, by inference.

Executor
nominate.

Where a testator in India included amongst the persons he appointed executors of his will, a firm in England of C. & Co., consisting of four members, which firm had subsequently, prior to his decease, been dissolved and reformed, and finally dissolved:—Held that the appointment was of the firm individually not collectively, and that

(*u*) *Smethurst v. Tomlin*, 2 Sw. & Tr. 143.

(*x*) *Hill v. Mills*, S. C. 1 Salk. 36.

(*y*) *Godolph. pt. 1, bk. v. s. 3.*

(*z*) *Swinb. pt. 5, s. 1, pl. 6.*

(*a*) *Godolph. pt. 2, c. 9, s. 1.*

(*b*) *Godolph. pt. 2, c. 6, s. 2.*

(*c*) *Evans v. Tyler*, 2 Robert.

132.

each of the members was entitled to be joined in the To whom.
probate (*d*).

Where the executor named in a will is a corporation Executor cor-
poration.
aggregate, administration with the will annexed will be
granted to their syndic, *i. e.*, a person specially appointed
by the corporation for the purpose (*e*).

A domiciled Portuguese by his will appointed A. and Executors
nominate.
B. his executors in Portugal, and C. and D. his executors
in England:—Held, that as one of the latter executors
was resident in Portugal, the words *in* England and *in*
Portugal were equivalent to *for* England and *for* Por-
tugal respectively (*f*).

Where a will contained a reference to executors
“hereinafter named,” but did not appoint executors, and
a clause appointing executors was written immediately
underneath the testator’s signature, it was held, that the
reference in the will was not such a reference to the clause
appointing executors, as a document in existence at the
time of the execution, as to incorporate it or to justify
the Court in receiving parol evidence that it was written
before the will was signed (*g*).

Where the deceased left in her will one sovereign to the
executor and witness of my will for their trouble to see
everything divided justly, no person was named as exe-
cutor in the will, but opposite the names of the attesting
witnesses, and beneath the signature of the deceased, were
the words “witnesses and executors,” which words were
written by one of such witnesses by direction of the de-
ceased previous to the execution of the will:—Held, that
the deceased had failed to make her lawful appointment of
executors (*h*).

Where a will contained the following appointment of

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| (<i>d</i>) <i>In goods of Fernie</i> , de-
ceased, 6 No. of Ca. 657. | P. & M. 107. |
| (<i>e</i>) <i>Darke</i> , <i>In goods of</i> , 29 L. J., | (<i>g</i>) <i>Dallon</i> , <i>In goods of</i> , 1 L. R.,
Prob. 189. |
| P. & M. 71. | (<i>h</i>) <i>Woods</i> , <i>In goods of</i> , 37 L. J., |
| (<i>f</i>) <i>Velho v. Leite</i> , 33 L. J., | P. & M. 23; 1 L. R., Prob. 56. |

B.

K

To whom.

executors—"I appoint A. as my executor with any two of my sons;" the testator died leaving three sons: the Court declined to grant probate to A. and two of the sons (*i*).

Where a testator made a will in England appointing A. and B. his executors; he afterwards made a codicil in India, in which he desired that his affairs might not be placed in the hands of the Administrator-General, but might be managed entirely by C. and D., whom he appointed his executors in that country:—Held that C. and D. were not entitled to probate in England (*k*).

Where the testator died leaving two wills, one limited to property in England, the other to property in Tasmania, and he appointed different executors in each; the Court granted probate of both papers, as together constituting the will of the deceased, to the executors named in the English will (*l*).

Where a testator appointed as executrix of his will "my wife M. G.," it was held that this was no *falsa demonstratio*, though she was not wife of the testator, as the pretended marriage was void on the ground of affinity (*m*).

An illiterate testator appointed his widow and his son residuary legatees, and named them "*whole and sole executrix*;" the Court inferred that his intention was to include them both, and made a joint grant of probate to them (*n*).

Testator appointed A. his sole executor in England, and B. and C. executors of his will in India; probate was granted in England to A., reserving power of making a like grant to B. and C., and was accepted by A; an application by A. that the grant should be altered by striking out the reservation of power to B. and C. as

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| (<i>i</i>) <i>Baylis, In goods of</i> , 31 | P. & M. 48. |
| L. J., P. & M. 119. | (<i>m</i>) <i>Gausden, In goods of</i> , 31 |
| (<i>k</i>) <i>Wallich, In goods of</i> , 33 | L. J., P. & M. 53. |
| L. J., P. & M. 87. | (<i>n</i>) <i>Court, In goods of</i> , 31 L. J., |
| (<i>l</i>) <i>Harris, In goods of</i> , 39 L. J., | P. & M. 61. |

having been improperly inserted, was refused upon the ground that such reservation, if improperly inserted, in no way prejudiced A. (o). To whom.

A married woman, by virtue of certain powers given to her, which were particularly set out, executed a will in which she appointed three persons executors: she afterwards, by a second testamentary paper, disposed of other property which had been left to her for her separate use: in this she nominated one of the above persons sole executor; probate was granted of both papers, as together containing her will, to the three executors named in the paper of earlier date (p).

The power of appointing an executor may be delegated by the testator; as where a person dying in Scotland by his will directed that the legatees should appoint two persons to execute his testamentary bequests, probate was granted to the nominees as executors (q). A testatrix concluded her will thus—"I must beg A. to appoint some one to see this my will executed:"—Held that A. might appoint himself (r). Delegated appointment.

A testator appointed his son sole executor, but in the event of his going abroad, or being and remaining abroad for upwards of two calendar months, then he appointed B. his executor: the son, after the death of the testator, went abroad without taking probate, and there remained: the Court granted probate to B., but reserved power to the son to prove the will (s). Substituted executor.

Testator appointed A., an officer in the navy, his executor, "and in case of his absence on foreign duty" he appointed B. his executrix: when the testator died A. was in England, but shortly afterwards he went abroad on foreign service, and still remained abroad.—Held that B.

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| (o) <i>Pulman, In goods of</i> , 33 | 548. |
| L. J., P. & M. 20. | (r) <i>Ryder, In goods of</i> , 31 L. J., |
| (p) <i>Morgan, In goods of</i> , 36 | P. & M. 215. |
| L. J., P. & M. 64. | (s) <i>Lane, In goods of</i> , 33 L. J., |
| (q) <i>Re Cringan</i> , 1 Hag. Ecc. R. | P. & M. 185. |

To whom.
Substituted
executor.

was entitled to probate as substituted executrix, the testator's intention being that she should act if A. were abroad when the necessity for proving the will arose (*t*).

A will contained the following clause: "I appoint J. J. my executor, but should he decline or consider himself incapable of acting, then I appoint E. J. to be executor." J. J. died in the lifetime of the testatrix:—Held that the intention of the testatrix was, that E. J. should be executor if J. J. could not or would not act, and that E. J., as substituted executor, was therefore entitled to probate (*u*).

Where a testator appointed two executors, and provided that on the death of either of them two others should be substituted: on the death of the original executor, who had proved the will, and on a proxy of consent from the other, probate was granted to one of the substituted executors, it appearing to have been the testator's intention that the substitution should take place on the death of either of the original executors, whether happening in the testator's lifetime or afterwards (*v*).

Where "failing A.," B. was substituted executor, the court held that the condition of substitution was satisfied by A.'s refusal to act, and granted probate to B. on the renunciation of A. (*x*).

Succeeding
executor.

Where A. died, leaving a will, appointing B., C., D. and E. her executors, and directing that in case B. should die, F. should be an executor in his place: all the executors proved the will: B. died, and F. applied that a double probate should be granted to him:—Held that he was entitled to the grant without the consent of the surviving executors, the will showing a clear intention that he should, on B.'s death, succeed him as an executor (*y*).

(*t*) *Langford, In goods of*, 37 L. J., P. & M. 20; 1 L. R., Prob. 458.

(*u*) *In the goods of Lydia Betts*, deceased, 30 L. J., P. M. & A. 167.

(*v*) *In goods of Lighton*, de-

ceased, 1 Hag. Ecc. R. 235.

(*x*) *Colquhoun, In goods of*, 37 L. J., P. & M. 1.

(*y*) *Johnson, In goods of*, 27 L. J., P. & M. 9.

Executor according to the Tenor of the Will.] An executor need not be appointed by express words; his appointment may appear by construction, in which case he is called an executor according to the tenor of the will. For although no executor be expressly nominated in the will by the word *executor*, yet, if by any word or circumlocution the testator recommend or commit to one or more the charge and office, or the rights which appertain to an executor, it amounts to as much as the ordaining or constituting him or them to be executors (*z*).
To whom.
According to
tenor.

We must now consider what are the “words or circumlocution” which will amount to an ordaining or constituting a person executor.

Directing certain persons to pay debts, funeral expenses and expenses of probate, is an appointment of such persons as executors (*a*); but otherwise, if they are directed to pay them out of a particular fund, and not out of the general estate (*b*).
What is not.

Nor will a mere direction to a legatee, to pay the funeral expenses out of his legacy (*c*), constitute him executor according to the tenor.

When the whole personal property is left to a trustee on trust for a specific purpose, and no executor is named in the will, such trustee is not entitled to probate as executor according to the tenor (*d*).

Where H. executed a will, in which was a clause as follows:—“I give and bequeath to A. B. and C. D., administrators and assigns, and to be disposed of by them as trustees, all funeral expenses and others to be paid, and afterwards the residue of my personal estate to be paid to,” &c.:—Held that A. B. and C. E. were not executors according to the tenor (*e*).

Testatrix, a married woman, made her will in exercise

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| (<i>z</i>) Swinh., pt. 4, s. 4, pl. 3. | P. & M. 15. |
| (<i>a</i>) <i>Re Fry</i> , 1 Hag. Ec. R. 80. | (<i>d</i>) <i>Jones</i> , In goods of, 2 Sw. & |
| (<i>b</i>) <i>Toony</i> , In goods of, 3 Sw. & | Tr. 155; 31 L. J., P. & M. 199. |
| Tr. 562; 34 L. J., P. & M. 3. | (<i>e</i>) <i>Heaton</i> , In goods of, 7 Jur., |
| (<i>c</i>) <i>Smith</i> , In goods of, 34 L. J., | N. S. 832. |

Executor according to the tenor.

of a power: the will commenced, "I direct the trustees under my marriage settlement to pay," &c.: it then set out several legacies, and disposed of the residue of the trust fund, and concluded thus:—"And I give the said trustees all necessary powers of sale, and power to mortgage all or any part of my said property, the more effectually to carry this my will into execution:"—Held that the trustees were not executors according to the tenor (*f*).

Universal legatee.

The universal legatee of a testamentary paper is entitled to administration with the will annexed, but not to probate as executor according to the tenor. No trace of any different practice can be found in the registry (*g*).

According to the tenor, what is.

On the other hand, a direction to an individual to receive the property and divide it, constitutes him an executor according to the tenor of the will (*h*).

Where M. duly executed a testamentary paper in the form of a letter, beginning "My dear Eliza," and containing full information as to the amount of her property, with full directions as to how she wished it to be disposed of, and concluding with these words: "I know of nothing else, my dear Eliza, to trouble you with, and trust that this will not involve you in much," the Court decreed probate of the paper to Eliza, as executrix according to the tenor (*i*).

Where A. appointed B. and C. trustees to dispose of his effects as they thought fit, and to receive his life assurance for the benefit of his two sons, it was held that they were executors according to the tenor (*k*).

Where B., after a direction that his debts and funeral expenses should be paid, bequeathed to certain persons the whole of his property in trust that they should, as soon as

(*f*) *Fraser, In goods of*, 40 Jnr., N. S. 1027.
L. J., P. & M. 9.

(*g*) *In the goods of Thomas Henry Oliphant*, deceased, 1 Sw. & Tr. 525.

(*h*) *Saunders, In goods of*, 11

(*i*) *Manly, In goods of*, 3 Sw. & Tr. 56; 31 L. J., P. & M. 198.

(*k*) *Gale, In goods of*, 18 L. T., N. S. 696; 16 W. R. 942.

might be after his death, convert into money, get in, and receive the personal estate, and divide it as therein directed, except certain furniture, which he bequeathed to his daughter :—Held that the trustees were also executors according to the tenor of the will (*l*).

Executor according to the tenor, what is.

Testatrix by her will appointed A. trustee, with power to convert the residue of her estate into money, and, after payment of her debts and funeral expenses, to dispose of the property in accordance with the directions given in such a will, and she also appointed him executor: by a codicil, she revoked that part of her will which gave the property in trust to A., and, in lieu of him, appointed her nephews B. and C., and providing C. should not be in England, his brother D. to act in his capacity; she also revoked the appointment as executor, and in his place appointed B. and C.; B. renounced probate of the will of the deceased, C. at the time of her death was not in England:—Held that D. was an executor according to the tenor of the will, but that power must be reserved to make a grant to C., in case he should return to this country (*m*).

Where a testator gave a legacy to Eleanor Taylor, and other legacies to his daughter-in-law, Mary Leah, immediately after which legacies followed these words: "But should the within-named Mary Leah be not living, I do constitute and appoint Eleanor Taylor my whole and sole executrix of this my last will and testament, and give her the residue." Eleanor Taylor died before the testator:—Held that Mary Leah was appointed executrix by implication according to the tenor (*n*).

Testator in his will left his property, after the payment of his debts and funeral expenses, to certain persons, and constituted and appointed A. and B. to be his trustees, with full power to dispose of all his property, and convert the same into money, to be deposited in government funds

(*l*) *Baylis, In goods of*, 35 L. J., L. J., P. & M. 49.

P. & M. 15.

(*n*) *Naylor v. Stainsby*, 2 Lee,

(*m*) *Goodworth, In goods of*, 37 54.

Executor according to the tenor.

Implied alteration in codicil.

for the purposes above stated:—Held that A. and B. were executors according to the tenor of the will (o).

A person, appointed limited executor in a will, may be appointed general executor in a codicil by implication, without express words (p).

Renunciation.] “One who is appointed an executor may renounce; it would be injustice to allow actions to be brought against one appointed executor, who never meant to act as such, before he had an opportunity of renouncing” (q).—Best, C. J.

“No man has a right to make another an executor, without his consent; and even if in the lifetime of the testator he has agreed to accept the office, it is still in his power to recede, except so far as his feelings may forbid it; it will be very proper for him to do so, if he finds that his charge, as executor, will be different from what he conceived it was to be, when he entered into the engagement” (r).—Ld. Redesdale.

He has, therefore, the option to accept or refuse, which option continues until determined by acceptance or refusal.

The acceptance is evidenced by taking out probate, or by acting as though he had done so, which is called intermeddling. If he, therefore, deal with the estate, it is considered that he has already accepted the executorship, and the court may compel him to take the grant (s).

Intermeddling, what is.

Any acts which show an intention to take upon them the executorship, prevent executors renouncing; therefore the insertion of an advertisement calling on persons to send in their accounts and to pay money due to the testator's estate to A. and B., “his executors in trust,” was held to make them compellable to take probate, and to subject them personally to the costs occasioned by their resistance;

(o) *Chappell, In goods of*, 37 704.

L. J., P. & M. 32.

(r) *Doyle v. Blake*, 2 Scho. &

(p) *Re Aird*, 1 Hag. Ec. R. 336.

Ler. (Ir.) 239.

(q) *Douglas v. Forrest*, 4 Bingh.

(s) *Wms. Exors.* 265, 6th ed.

the estate being small and left for two years and a half without representation (*t*). Renunciation.
Intermeddling.

So where an executor and trustee acts under a will, the law presumes he acts in his superior capacity, that of executor; and where he acts as executor by discharging a debt due to the estate of the testator, his renunciation will be rejected (*u*).

On the other hand, where an executor had taken the oath of office and given an appearance, a suit touching the validity of the will was allowed to be dismissed, in order that he may renounce and become a witness in the cause (*v*).

Where a party named as executor has intermeddled he can be cited to enter an appearance and take probate, and his disobedience to do both these acts will be a contempt of court, but the Court will not attach him for disobedience in the first instance. For where the executors of a will intermeddled in the estate and effects of their testator, without taking probate of the instrument; and a citation having been served upon them, to enter an appearance and take probate, they entered an appearance but took no further steps in the matter; the Court refused to grant an attachment against them, for contempt in not obeying the citation, but directed a peremptory order to be served upon them to take probate within ten days from the date of the order (*x*).

There is in respect of intermeddling a great difference between administrators and executors, for an executor who has intermeddled can be compelled to take probate, but a person who is not an executor, though he has intermeddled, cannot be compelled to take letters of administration (*y*); and the reason is obvious, as the latter might be sued by

Difference between executor and administrator intermeddling

(*t*) *Long & anor. v. Symes & anor.*, 3 Hag. Ecc. R. 771.

(*x*) *Mordaunt v. Clarke & anor.*, 38 L. J., P. & M. 45.

(*u*) *Pytt v. Fendall*, 1 Lee, 553.

(*y*) *Davis, In goods of*, 28 L. J.,

(*v*) *Jackson v. Whitehead*, 3 Phill. 577.

P. & M. 72.

Intermeddling. strangers as executor *de son tort*, but ought not to be compelled to carry out a trust which was never reposed in him, and which parties interested can carry out themselves; whereas an executor by intermeddling has altered and perhaps prejudiced the estate, and so far has taken on himself a portion of the trust which it is just that he should be obliged to complete (z).

Refusal by Renunciation.] The refusal is evidenced by filing a renunciation in the registry; a form whereof appears among the Non-C. Forms, No. 22, P. R. It will be seen that this form contains an express statement that the party filing it has not intermeddled in the estate and effects of the deceased: where this statement is untrue, the Court, on the application of the renunciant, may declare his renunciation invalid and direct the record of it on the probate to be cancelled (a).

By not appearing.] A refusal also may be evidenced by not appearing when cited to take probate (b).

Time for option.

But if the executor delay exercising his option he may be cited to accept or refuse probate. The time which the party is allowed for deliberation as to whether he will accept the trust or not, or, in other words, which must elapse before the issuing of the citation to accept or refuse, is uncertain and in the discretion of the Judge. Much of course depends on the nature of the estate to be administered. Sometimes it has issued within the year, sometimes within a month or two. The only analogy that can be given is that arising from the 55 Geo. III. c. 184, s. 37, whereby a party named as executor if he administer, *i. e.* intermeddle, is liable to a penalty of 100*l.* and 10 per cent. on the duty, if he omit to take probate within six months.

Renunciation in one character.

No person who renounces probate of a will, or letters of administration of the personal estate and effects of a

(z) *Davis, In goods of*, 28 L. J., Sw. & Tr. 465.
P. & M. 72.

(b) 21 & 22 Vict. c. 95, s. 16.

(a) *Badenack, In goods of*, 3

deceased person, in one character, is to be allowed to take Renunciation. a representation to the same deceased in another character (c).

Where an executor, before the probate was passed, re-nounced; after that act came into operation he retracted his renunciation and renounced again:—Held that he was not an executor, renouncing after the commencement of the act, within the meaning of the 79th section, which enacts that the rights of such an executor shall wholly cease and the representation go as if he had not been appointed an executor (d). Rule 50.

Semble, that an executor cannot retract his renunciation except for the purpose of taking probate.

“After looking through a great number of cases, I find none where the Court has refused to dismiss, except on the ground of the party having intermeddled with the effects; the reason for this is obvious, that where a party has intermeddled, he has taken on himself the burden and acquired the responsibility of an executor” (e). In this is the distinction between executors and administrators: an executor who has intermeddled can be compelled to take probate, while an administrator cannot (f): (but he may be sued as an executor *de son tort* (g)), as may indeed be gathered from the forms of renunciation by an executor and by an administrator; see forms 21 and 22, P. R. Non-C.

An executor cannot renounce after he has taken probate. An executor under the will of a testator domiciled in Portugal accepted the executorship in that country, and also obtained probate in England: becoming afterwards, through age and infirmity, incapable of acting, a competent Portuguese tribunal permitted him to renounce the executorship, and appointed A. to act as executor in his

(c) Rule 50, P. R. Non-C.; Rule 61, D. R. See also C. P. Act, 1857, s. 79, and C. P. Act, 1858, s. 16.

(d) *Whitham, In goods of*, 36 L. J., P. & M. 26.

(e) 1 Lee, 557, note.

(f) *Davis, in goods of*, 1 S. & Sm. 152.

(g) *Edwards v. Harben*, 2 T. R. 597.

Renunciation. stead: upon application for a grant to A. of administration *de bonis non* with the will annexed:—Held that the renunciation of the executor though, sanctioned by the laws of Portugal, could not be recognized in this country, and that A. therefore was not entitled to the grant prayed (*h*).

Mere assent to wife's renunciation.

Rule 50, P. R. Non-C., does not apply to the husband of a residuary legatee, who signed a renunciation, executed by his wife, merely to signify his assent to her act; as a creditor he may take out administration, notwithstanding his signature to such a document (*i*).

Where A., before the C. P. Act, 1857, renounced, as executor, probate of a will, and, as residuary legatee in trust, administration with the will annexed, and administration was granted to the residuary legatee for life, it was held that, on the death of the administratrix, A. could not retract his renunciation in either capacity (*h*).

But the next of kin may, with the consent of the Court, retract a renunciation before administration has issued to another party, though the Court is not bound to allow such renunciation (*l*).

And where a person has renounced probate in one character, he may be entitled to administration *de bonis non* in an inferior character, which did not exist when he renounced in the superior character (*m*).

And, where an executor, having renounced in Australia, was appointed by the executors, who proved the will in the colony, their agent to obtain letters of administration with the will annexed in this country, the Court held, that the rule did not apply, and made the grant to him as attorney, but required that he should file a fresh and definite renunciation, which, beyond all question, should strip

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| (<i>h</i>) <i>Vega, In goods of</i> , 32 L. J., | Sw. & Tr. 515. |
| P. & M. 9. | (<i>l</i>) <i>Park, In goods of</i> , 6 Jur., |
| (<i>i</i>) <i>Biggs, In goods of</i> , 37 L. J., | N. S. 660. |
| P. & M. 79. | (<i>m</i>) <i>Leftus, In goods of</i> , 3 Sw. |
| (<i>h</i>) <i>Richardson, In goods of</i> , 1 | & Tr. 307; 33 L. J., P. & M. 59. |

him of the character of executor, and bring him within Renunciation. the operation of sect. 79 of the Probate Act (*n*).

The party entitled may depute his power of renunciation: as where a party entitled, being resident out of England, had, by power of attorney, specially authorized his brother to execute for him an instrument of renunciation and consent, the Court acted on a renunciation and consent so executed (*o*).

Forms of renunciation are for an executor or an administrator given for the Principal Registry Nos. 21 and 22, Non-C., and for the District Registries Nos. 22 and 23; these should be signed and sealed, and attested by one disinterested witness: but although the form seems to require sealing it is not essential (*p*); and the Court received and acted on an informal deed of renunciation, which stated in substance, though not in terms, that the executor had not intermeddled (*q*); but it will not recognize an agreement to renounce (*r*). How made.

When the document has been properly prepared, signed and attested, it must be filed with the principal or district registry, as the case may be, and the Court then receives and acts upon such renunciation.

Executor's Power.] The act of the executor, being the appointee of the deceased, binds all persons interested under the will, unless collusion be shown (*s*), and a party may at a *future time* allege collusion (*t*).

A next of kin, who has been cognizant of and privy to a suit between the executors and another next of kin, is bound by the decision in that suit, although he has not been cited to see proceedings and has not intervened

(*n*) *Russell*, *In goods of*, 38 L. J., P. & M. 31; 1 L. R., Prob. 634.

(*o*) *Rosser*, *In goods of*, 3 Sw. & Tr. 490.

(*p*) *Boyle*, *In goods of*, 3 Sw. & Tr. 426; 33 L. J., P. & M. 109.

(*q*) *Gibson*, *In goods of*, 1 L. R., Prob. 105; 35 L. J., P. & M. 114.

(*r*) *Hargreaves v. Wood*, 32 L. J., P. & M. 8; 2 Sw. & Tr. 602.

(*s*) *Wood v. Medley*, 1 Hag. Ec. R. 657.

(*t*) *Colvin v. Fraser*, *ibid.* 108.

Executor's
power.

therein. He cannot, therefore, reopen the question of the validity of the will after its validity has been established in such suit (*u*).

Before seven
days from
death.

When to issue.] By P. R. Non-C. 47, probate is not allowed to issue before seven days after the death of the testator, without leave of the judge.

After three
years from
death.

By Rule 49 P. R. Non-C., and Rule 53 D. R., where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars, and if they are not satisfied, they (if at the principal registry) may require such proof of the alleged cause of delay as they may think fit; or if at a district registry, the alleged cause be unsatisfactory, or the case be one of personal application, the registrar is to require an affidavit, or to communicate with the principal registry. The reason of this rule is that the Court being bound to satisfy itself that the applicant is entitled to the grant, great delay in applying, by raising suspicion, justifies it in calling for explanation (*x*).

Probate means the certificate under the seal of the Court that the copy annexed to it is authentic, and that the original will has been proved and registered. And that administration of the testator's effects has been granted to the parties therein named as executors.

How obtained.] The word *probate* is generally applied to the piece of parchment stamped with the seal of the Court, on which is ingrossed, in the curious handwriting affected in the offices of this Court, a statement in the nature of a record, that on a certain day the will of the deceased (naming the day of death and place of abode of the deceased) was proved and registered, and that administration of his effects was granted to the executor, he having first sworn faithfully to administer and to exhibit a true inventory and to render a just account when called on.

(*u*) *Ratcliffe v. Barnes*, 31 L. J.,
P. & M. 61.

(*x*) *Eliz. Darley*, deceased, 3
Hagg. Ecc. R. 561.

In the margin are the words "sworn under £———," and "extracted by the attorney or party extracting" (see form). On perusing this, the necessary steps that must ordinarily precede the grant appear. The executor must first file the oath of office, *i. e.*, the oath alluded to in the probate, and also the oath for the inland revenue, mentioned in the margin. Forms of these may be found in the Appendix, and may be obtained from any law stationer. They are to be sworn as other affidavits (see "Affidavits and how sworn"). On reference to the form of the oath for an executor, it will be seen that he swears that he believes "the paper writing hereto annexed and marked by me" to contain the true and original last will and testament of the deceased. At the time of his swearing this affidavit, the original and codicils (if any) must be annexed, and the executor must *mark* them, which he does by signing his name on them. The commissioner or party who administers the oath also *marks* the will and codicils (if any), in a similar manner, by signing his name (*y*).

Where, however, a will with the necessary affidavits was forwarded to the executor in India; and the several papers were returned correct in every respect, save the will was not marked by the person before whom the executor was sworn, as required by Rule 49, P. R. Non-C.; the Court, under the circumstances, dispensed with the rule and decreed probate (*z*).

Where a will has been proved in the proper Court of the domicile of the deceased, it is the ordinary practice of the Court of Probate in England to grant probate on a copy of the will authenticated by the authorities of the place of domicile. In the case of a Russian probate however, as the original will forms part of such probate, it will accept a certified copy of the will made in this country (*a*).

So where a certified copy of a will and codicil which had

(*y*) Rule 49, P. R. Non-C.; Rule L. T., N. S. 484.

60, D. R. (*a*) *Clarke, In goods of*, 36 L. J.

(*z*) *Williams, In goods of*, 17 P. & M. 72.

How obtained. been proved in Jamaica were sent to this country by the secretary of the island, but by mistake the probate was not sent, the Court, being satisfied by the certificate of the secretary that the copy sent was a true copy of the will and codicil, granted probate until a more authentic copy should be brought into the registry (*a*).

Oath of executor.

The first of these oaths is required from very early times by the common law; it is a promissory oath taken by the executor that he will execute the office justly (*b*). The second oath is required by 55 Geo. III. c. 184, s. 38, in order that the proper stamp-duty may be paid to the inland revenue (see duty, *infra* (*c*)).

These two affidavits are all that are required in general; but circumstances may and frequently do arise, involving the necessity of other and further affidavits, and sometimes a modification in the form of these before probate will be granted.

Wills before 1838.

It must be remembered that important differences exist between the method of obtaining probate of wills executed before the Wills Act, and the method of obtaining probate of those made since.

The difference arises from the operation of the statute, 1 Vict. c. 26, before the passing of which a different mode of execution was allowed, varying according to the subject-matter of the will. The statute having, however, substituted a simple manner of execution for all wills alike, whatever may be the property disposed of by the will, has rendered the method of proof simple and uniform.

The former practice becomes every day of less importance, as few wills are now produced for probate which have not been executed since the 31st December, 1837, (the Wills Act applying to wills executed on or since the

(*a*) *Turner, In goods of*, 36 L. J., P. & M. 82.

(*b*) *Rew v. Rainer*, 1 Ld. Raym. 363.

(*c*) The prohibition to deduct debts made in 55 Geo. III. c. 184,

s. 38, is now modified by 31 & 32 Vict. c. 124, s. 7, whereby, when leasehold estates are the *sole* security for mortgage debts, the amount of such debts may be deducted from the value of such leasehold estates.

1st January, 1838,) but the following observations are devoted to the method of proof of such wills. Wills made before 1838.

In the first place, it is not necessary that a will, codicil or testamentary paper, dated before the 1st January, 1838, should be signed by the testator, or attested by witnesses, to constitute it a valid disposition of the testator's personal property (*d*).

Rules 17 to 27, P. R. Non-C., and Rules 22 to 32, D. R., give minute directions as to what is required for the probate of such wills, &c., and are in fact an exposition of the law regulating the execution of wills prior to that date.

If the testamentary paper produced bears any appearance of an attempted cancellation such appearance must be accounted for (*e*), (in the District Registries *by affidavit*, and then be transmitted to the Principal Registry).

This rule is different to what it would be in the case of a similar appearance in a will executed since 1st January, 1838, as such last-mentioned wills cannot be cancelled, except as pointed out by the statute, and any mere intention to cancel amounts to nothing; but it is otherwise in wills executed before the act.

Will since 1837.] The directions for proof of a will, executed subsequent to the Wills Act, are given in Rules 4 to 16, P. R. Non-C., and Rules 6 to 12, D. R., both inclusive. Proof of will subsequent to 31 Dec. 1837.

If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the registrars must require an affidavit from one at least of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution were, in fact, complied with, and such affidavit must be engrossed and form part of the probate (*f*). Attestation clause.

(*d*) Rule 17, P. R. Non-C.; Rule 29, D. R.

22, D. R. (*f*) Rule 4, P. R. Non-C.; Rule

(*e*) Rule 24, P. R. Non-C.; Rule 7, D. R.

Will since
1837.

This rule must be strictly followed, a mere consular certificate will not be accepted in lieu of it (*g*).

Witness must
prove mode of
execution.

In every case where an affidavit is made by a subscribing witness to a will or codicil, such subscribing witness shall depose as to the mode in which the said will or codicil was executed and attested (*h*).

The affidavit therefore must not only state that the provisions of the statutes were complied with, but must show the actual manner in which the will was executed and attested, see Form, Appendix III.

If no attestation
clause, or
insufficient,
and witnesses
dead.

Should both the witnesses be dead, or should it not be possible to obtain affidavits from them or either of them, then resort must be had to any person who was present at the execution of the will. Should this be unattainable, then evidence must be given of the handwriting of the testator, and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the will (*i*).

These rules are binding on the registrars, but may be, it appears, dispensed with by the Court (*j*).

This rule is in the same words as Rule 59 of the former Rules of 1858, and that rule was held to apply to a will made by a soldier in actual military service, and executed by a mark (*k*).

Testator blind
or obviously
illiterate.

If the testator appear to have been blind or obviously illiterate, or ignorant, the registrars will require to be satisfied that the will was read over to the testator before its execution, or that he at that time had knowledge of its contents (*l*).

If made
abroad.

An application for probate of a testamentary instrument, executed by a person when domiciled abroad, should be

(*g*) *Latham, In goods of*, 10 Jur. 620.

(*h*) Rule 57, P. R. Non-C.; Rule 70, D. R.

(*i*) Rule 7, P. R. Non-C.; Rule 10, D. R.

(*j*) *In the goods of Nicholl*, deceased, 34 L. J., P. M. & A. 30.

(*k*) *Hackett, In goods of*, 28 L. J., P. & M. 42.

(*l*) Rule 71, P. R. Non-C.; Rule 81, D. R.

supported by evidence that, according to the law of the domicile, such instrument is good (m). But in this case the attention of the Court does not seem to have been called to the then recent statute 24 & 25 Vict. c. 114. Will since 1837.

Pro forma motions for probate are not uncommon, the object being to avoid misunderstanding, and possibly litigation, about the instrument between legatees. As where a paper writing, purporting to be a will, appears clearly from the affidavits of the attesting witnesses to have been not duly executed, and a person appointed executor by it, is desirous of obtaining the decision of the Court that it is inoperative as a will, he may do so by moving the Court to decree probate (n).

PRACTICAL DIRECTIONS FOR OBTAINING PROBATE.

Having got your affidavits regular take them, together with the original will and the engrossment and the stamped blank form of probate, if in London to the Principal Registry, and leave them with the Receiver of Wills, if in the country to the District Registrar; on receipt of the affidavits and the will the officer to whom they are given will give a receipt for them. Take care of this receipt, as it is only on the production of this that the probate will be delivered to you. He will also search to see if any probate or letters of administration in respect of the same deceased have already been issued. For the fees payable, see Appendix IV.

Call in a day or two, according to the length of time required for making out the probate, which mostly depends on the length of the will itself, and the probate will be delivered to you upon production of the receipt, the original will remaining in the custody of the officer. As a rule this document is never parted with by the Court, though there are exceptions, as in the following instances:—

(m) *Stoddart, In goods of*, 31 L. J., P. & M. 195.

(n) *In the goods of Charlotte Jackson, deceased*, 28 L. J., P. & M. 32.

Delivering out
original will.

Under the old law, an original will disposing of real estate in Scotland might be delivered out of the registry in order to be proved and recorded at Edinburgh, on an authentic copy being left therein, and a bond being given that the will should be safely deposited in the registry at Edinburgh, and that a certificate thereof should be transmitted to the Court (*o*).

Where the executor is in this country the Court will allow a will, which has been brought into the registry, for the purpose of obtaining probate, to be delivered out to the executor in order that he may be sworn thereto before a commissioner, on an exemplified copy of it being left in the registry (*p*).

And where in a suit for revocation of probate of a will, issue was joined on the plea of undue execution, and a commission issued for the examination of one of the attesting witnesses, who was resident in New Zealand, the Court ordered the will to be sent to New Zealand, annexed to the commission, upon an authentic copy being left in the registry (*q*).

Amending
grant.

An original will and the copy of it in the probate bore a wrong date; the Court ordered the grant of administration, with the will annexed, to be amended, so as to show on the face of it the real day on which the will was executed (*r*).

Several
executors.

Where several persons are named as executors, it is not necessary for all to prove together, one, even without notice to the others, may prove the will, and in such a case a power is reserved to grant probate to those persons named as executors who have not proved. In such a case, the original will being in the registry and probate in the hands of the executor who has first proved, it is obvious that to empower another or other persons to act

(*o*) *In goods of Russell*, 1 Hag. Ecc. R. 91.

(*q*) *Foster v. Foster*, 33 L. J., P. M. & A. 113.

(*p*) *In the goods of W. H. Gibbs*, deceased, 28 L. J., P. & M. 90.

(*r*) *Alchin, In goods of*, 38 L. J., P. & M. 84.

as executors, another probate must issue. This second grant is called a *double* probate. Double probate.

It is not necessary that the executors should be appointed in the same manner. For instance, one may be named as executor and another may be executor according to the tenor, as where A. appointed his wife executrix during widowhood; C. and D. residuary legatees in trust "to pay debts, funeral and testamentary expenses," &c.; the widow alone proved and died without having married again, leaving B. executor of her will: it was held, C. and D. were executors according to the tenor and entitled to probate of A.'s will (s).

The practice in obtaining a second or double probate is the same as in obtaining the first, except in some modifications necessitated by the circumstances. The original will being in the registry, the second executor has three courses open to him; he may either attend there, and the will being found there and produced to him, he must there mark it, and be then and there sworn to his oath of office and his oath for the Inland Revenue before one of the registrars. 2nd. The second executor may be sworn to and mark the probate already granted, in this case he may be sworn before any person qualified to administer oaths in the court: in this case the first probate is taken into the registry and impounded; if the first executor is dead, the first probate is kept in the registry. If he be living, it is handed back to him on an examined copy of it being filed. 3rd. The second executor may be sworn to and mark an office copy of the will under the seal of the court. Practice.

Corresponding changes must be made in the affidavits to suit these different cases, and the oath of the second executor must contain a statement of the will having been proved by the first executor, and that power has been reserved to the applicant of having the like grant made to him. See Form 87, Appendix III.

Double probate.

The duties are payable only on the first grant (†). Where an executor who has obtained probate, power being reserved to a co-executor to come in and prove, refuses to produce the probate and furnish an account of the effects of the deceased, in order that the co-executor may obtain probate without paying probate duty; the Court will allow a citation to issue, calling upon him to produce such probate and furnish such account.

ADMINISTRATION WITH WILL ANNEXED.

The Court pays deference to the wishes of the deceased, not only in carrying them out as expressed in his will, but in confiding this duty to the person selected by him. It, however, sometimes happens that through the inadvertence of the deceased, or by circumstances subsequently happening, such as the death, incapacity or refusal to act of the person so selected, there is no person who is able and willing to take upon himself the duty of executor. It then becomes necessary for the Court to clothe some person with this office. He is in a hybrid position. In so far as he is deputed to carry into effect the will of the deceased, he is *pro tanto* an executor, but as he is not the person confided in by the deceased, but the mere nominee of the Court, in that respect he is an administrator. He is called an “*administrator with the will annexed*,” that is to say, he is the administrator of the deceased, but to his letters of administration are annexed the will of the testator, and the mixed character in which he stands, occasions, when we consider his duties and rights, a proportionate mingling of the two characters of executor and administrator.

The first provision for such a mode of administration is to be found in 21 Hen. 8, c. 5, s. 3, which provides for the single cases of executors refusing to prove, but there are many other cases in which it is necessary that the Court should appoint some person to carry out the will of the testator.

21 Hen. 8, c. 5, s. 3.

(†) 41 Geo. III. c. 86, s. 2, 5 & 7 Vict. c. 82, s. 36.

In what Cases.] Administration, with the will annexed, is, therefore, granted in all cases where a will exists, and for some reason or other there is no person capable as of right or willing to act as executor. In what cases granted.

Such as the case provided for by the statute (*u*), where the executor who is appointed refuses to act, or where he is incapable of acting by reason of insanity or some other cause, or where he dies during the lifetime of the testator, or after the death of the testator, but before he proves the will (*x*), or where he dies intestate after proof of the will, but before administering all the effects (*de bonis non*), or where there is an intermediate period during which he cannot act, or where no executor is appointed, or if appointed not known, and the like, together with cases coming under the operation of 20 & 21 Vict. c. 77, s. 73.

Thus, where a codicil contained dispositions independently of the will, and also referred to the will, which, however, could not be found, the Court granted administration with the will annexed (*y*). Will lost.

So, where an aged testator gave instructions that William George, of 4, Finsbury Square, watchmaker, should be his executor, and, on the death of testator, it appeared that neither he nor his family knew any one of that name, and that no such person could be found or heard of at that address, the Court granted letters of administration, with the will annexed, to one of the residuary legatees, there being no appointment of an executor willing and competent to take probate (*z*). No executor known.

Where a person, having had a will prepared, in which an annuity (the amount being left in blank) was given to his wife, and the rest to his children, and the names of the executors were not filled in, at the instigation of those about him, executed the same in its unfinished state, at the same time remarking, that it would be no good till the Executors not appointed.

(*u*) 21 Hen. VIII. c. 5, s. 3.

349.

(*x*) 21 & 22 Vict. c. 95, s. 16.

(*z*) *Sawtell, In goods of*, 2 Sw.

(*y*) *Greig, In goods of*, 14 W.R. & Tr. 448; 31 L. J., P. & M. 65.

In what cases
granted.

blanks were supplied:—Held that the Court could not, on affidavit, say the deceased did not execute the will *animo disponendi*, and it must be admitted to probate; but that, as there was an uncertainty as to the residuary bequest, the right of the widow, under 21 Hen. 8, c. 5, s. 3, would prevail, and administration, with the will annexed, must be granted to her (a).

Executor
bankrupt and
absent.

When the executor of a will has become bankrupt, and resident in Australia, the Court granted letters of administration, with the will annexed, to one of the legatees, but required, before the letters issued, that the written consent of the next of kin and the persons entitled to the undisposed residue should be brought in and filed in the registry (b).

When the executor and trustee under a will had lent a portion of the trust fund on the security of a promissory note made payable to him as executor, and upon his becoming bankrupt the Court of Chancery had appointed a new trustee; administration, with the will annexed, was granted to the new trustee, limited to the interests of the *cestui que trust* in other money due on the promissory note (c).

Where exe-
cutor dies or
refuses.

Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person, in respect of the executorship, shall wholly cease, and the representation to the testator and the administration to his effects, shall and may, without any further renunciation go, devolve and be committed in like manner, as if such person had not been appointed executor (d).

Executors not
appearing or
renouncing.

The effect of the Court of Probate Act, 1857, s. 79, and Court of Probate Act, 1858, s. 16, is that if the executors do not appear to a citation, or if they renounce, the will

(a) *Poole, In goods of*, 35 L. J.,
P. & M. 97.

(c) *In the goods of Hampson*,
35 L. J., P. & M. 1.

(b) *In the goods of Comper*, 38
L. J., P. & M. 8.

(d) C. P. Act, 1858, s. 16.

must be read and administration granted, as if no executors had been appointed (*e*).—Cresswell, J. O. In what cases granted.

Wherever an executor has been appointed under the will he should be cited before administration can be granted to any other person, and this remark applies to all persons applying for administration, where there is any one who has a prior title (*f*). Executor appointed.

Although the construction of a will is not the office of this Court, yet it is required sometimes to do so incidentally to its regular jurisdiction, and in so doing it will adopt that construction (if any) which has been placed on the will by the Court of Chancery. For where the prerogative Court, putting a construction on a will, made a grant of letters of administration to K.: and the Court of Chancery held that decision to be wrong, and that W. was entitled; K. appealed to the House of Lords: W. applied for the grant to be to him, in accordance with the decree of the Court of Chancery: it was held that the proceeding in Chancery was in the nature of an appeal from the prerogative Court, and that its decision must prevail, and the grant was decreed to W. (*g*). Court follows the construction of the Court of Chancery.

To whom granted.] A person cannot propound a will in which he has no interest either as executor or legatee (*h*).

Neither can a party be cited to propound a will even though he be a legatee if he is not named as executor. For where A. left a will appointing executors and a paper writing purporting to be a codicil disposing of his property in a different manner, the executors, believing this not to be a genuine codicil, moved for a citation, calling upon the legatees under the alleged codicil to propound it or show cause why probate of the will only should not be granted. The Court rejected the motion (*i*). Who may be cited to propound.

(*e*) *O'Dwyer v. Geare*, 29 L. J., P. & M. 122.
P. & M. 47.

(*h*) *Goodman v. Goodman*, 2 Lee, 2.

(*f*) See *Re Watts*, 1 Sw. & Tr. 538.

(*i*) *Benbow, In goods of*, 31 L.

(*g*) *Warren v. Kelson*, 28 L. J., J., P. & M. 171.

To whom
granted.

Largest
interest.

In selecting the grantee of a simple administration and of an administration with the will annexed, the same principle obtains, viz., that the Court commits the charge of administering the estate of the deceased to the person who is most largely interested in it, supposing, as common sense would suggest, that he who is most interested is most likely to discharge this duty best. In the former case the Statutes of Distributions (*k*) stand as it were in the place of a will, and points out who is the most interested, in the latter case it is the will itself which, *in general*, shows who is the most interested. In those cases where the will fails to distinguish the party, the rules for selecting an administrator, with the will annexed, become the same as those for selecting a simple administrator.

Even when a married woman makes a will, and does not appoint an executor, the practice is to grant administration, with the will annexed, to the persons having the greatest interest under the will in preference to the husband (*l*).

When parties claiming administration are equally interested or have equal rights, the Court will exercise discretion in the grant (*m*).

Direct in-
terests pre-
ferred.

Those, however, who have direct interests are preferred to such as claim in a representative character (*n*). But it seems that the administration of a *feme covert's* goods, left unadministered by the husband, has been held in several cases to belong under the 31 Edw. 3, st. 1, c. 4, and 21 Hen. 8, c. 5, to the next of kin of the wife, at the time of her death, though the right to the property is in the representatives of the husband (*o*). This is an exception to the general rule.

(*k*) 22 & 23 Car. II. c. 10; 29 Car. II. c. 3, and 1 Jac. II. c. 17.

(*l*) *In the goods of Bailey*, 2 Sw. & Tr. 135; 30 L. J., P. & M. 190.

(*m*) *Atkinson v. Bernard*, 2

Phil. 316.

(*n*) *Re Middleton*, 2 Hag. Ecc. R. 60.

(*o*) *Gill, In goods of*, 1 Hag. Ecc. R. 341; cases cited *ibid.* 344 et seq.

The residuary legatee is preferred to the widow or next of kin (*p*), notwithstanding that it is provided by 21 Hen. 8, c. 5, s. 3, that in case any person die intestate, or that the executors named in any testament refuse to prove it, the ordinary shall grant administration to the widow of the deceased, or to the next of kin, or to both according to the discretion of the ordinary (*q*). The residuary legatee has also the preference, even where there is no residue, and where he is only trustee (*r*). Notwithstanding the statutes require that administration shall be granted to the next of kin, it has been solemnly decided, that the residuary legatee is entitled, and it has always since been the constant practice so to grant it (*s*). The personal representatives of a residuary legatee have the same right as the residuary legatee himself, when the latter has a beneficial interest (*t*); but where the residuary legatee is only a bare trustee, the usual practice, upon his death, is not to grant the administration to his personal representatives, but to prefer those who take a beneficial interest (*u*). Inasmuch as the widow or the next of kin have *primâ facie* the right to administration, the burthen of proof rests with those who claim as or derivatively from the residuary legatee (*x*). It would appear that if the residuary legatees in trust refuse to act, and there is a power of appointing new trustees in such case in the hands of the residuary legatees, who are beneficially interested, the Court will not grant administration to the substituted trustees without the consent of all parties beneficially entitled to the trust property, until the trusts are actually vested (*y*).

To whom
granted.
Residuary
legatee.

Representa-
tive of
residuary
legatee.

(*p*) *Atkinson v. Bernard*, 2 Phil. 320. 261.

(*q*) *Thwaite v. Galloway*, 1 Lee, 414.

(*r*) *Atkinson v. Bernard*, 2 Phil. 316; *Hutchinson v. Lambert*, 3 Add. 27.

(*s*) *Re Gill*, 1 Hag. Ecc. R. 341.

(*t*) *Taylor v. Diplock*, 2 Phil.

(*u*) *Hutchinson v. Lambert*, 3 Add. 27; *Atkinson v. Bernard*, 2 Phil. 316; *Vincenze v. Frederici*, 1 E. & A. 109.

(*x*) *Taylor v. Diplock*, 2 Phil. 261.

(*y*) *Cresswell v. Cresswell*, 2 Add.

342.

To whom
granted.

C. P. Act, 1857,
s. 29.

Residuary
legatee dis-
cretionary.

Residuary
legatee, what
is.

The universal legatee of a testamentary paper is entitled to administration, with the will annexed, but not to probate (i. e., as executor according to the tenor); no trace of any different practice can be found in the registry; semble, the 29th section of C. P. Act, 1857, relates to the procedure of the court, not to the principles on which it is to act (z).

It is not obligatory in the Court to grant administration to the residuary legatee, consequently a *mandamus* will not be granted to compel such a course (a). It would seem, however, where the same person is next of kin and residuary legatee that a *mandamus* would be granted (b).

Where a will contained the following clause:—"I give and bequeath to A., B. and C. all my personal effects and everything of every kind that I have now, or may have at the time of my decease in my apartments at 13, Plaistow Grove, or elsewhere:" it was held the residuary personal estate passed under the words "or elsewhere" so as to carry the grant of administration with the will annexed (c).

A gift to A. of the remainder of money, goods and debts due to testator, after payment of debts, constitutes A. residuary legatee (d).

Where A. by his will, after directing the payment of his debts and certain legacies, desired that his remaining property should be placed in proper securities, and appropriated to the education of the children of B., as should seem most meet and beneficial to them by his executors; at the death of A., B.'s children had attained such an age as to require no further education: it was held, on the death of the executors, that B.'s children were entitled to

(z) *In goods of T. H. Oliphant*, Cas. temp. Lee, 414.

1 Sw. & Tr. 525.

(a) *R. v. Bettsworth*, 2 Stra.

956.

(b) *Linthwaite v. Galloway*, 2

(c) *In the goods of Scarborough*,

30 L. J., P. M. & A. 85.

(d) *Bloomfield, In goods of*, 31

L. J., P. & M. 119.

administration as residuary legatees, the testator having intended that the residue should be appropriated for their benefit, although, under the circumstances, the particular mode in which he had intended to benefit them was incapable of being carried into effect (*e*).

To whom granted.
Residuary legatee, what is.

“What is left, my books and furniture, and all other things” are words sufficiently comprehensive to cover the general residue (*f*).

Testator gave and bequeathed to his sister absolutely all his “houses and land and book debts, household furniture, plate, linen, books, china, glass, books of art, drugs, hay, straw, potatoes, and everything on the said premises, horse, gig, &c., and all other chattels:”—Held that the residue passed, “all other chattels” being meant to supply any omission in the previous enumeration (*g*).

On the other hand where the testator, in addition to specific bequests, gave to A., the only legatee named in the will, “also any money that may result from the sale of my effects, after paying the few small debts that I owe:”—Held not to carry the residue (*h*).

Residue, what is not.

Testatrix by a codicil bequeathed her wardrobe, trinkets and *other things* to her aunt. In the will and codicil she had applied expressions similar to the words *other things* to a portion only of her property undisposed of:—Held, upon the construction of the will and codicil, that the testatrix’s aunt was not residuary legatee (*i*).

On an application for a grant of administration, with the will annexed, to the sole legatee, on affidavit that the testatrix died possessed of no other property than that specifically described in the will, it was held that there being no residuary clause, no reason was shown for not citing the next of kin: that they must be cited, or that adminis-

(*e*) *Presant v. Goodwin*, 29 L. J., P. & M. 115.

L. J., P. & M. 47.

(*f*) *Cadge, In goods of*, 37 L. J., P. & M. 15.

(*h*) *O’Loughlin, In goods of*, 39

L. J., P. & M. 53.

(*g*) *Sharman, In goods of*, 38

(*i*) *Smith, In goods of*, 34 L. J., P. & M. 15.

To whom
granted.

tration might be taken limited to the property specified in the will (*h*).

Residuary
legatee esta-
blishing will.

Where the plaintiff and defendant were the residuary legatees named in a will, which had been propounded by the plaintiff, the Court made a grant of administration, with the will annexed, to the plaintiff, who had established it, in preference to the defendant, who had contested its validity (*l*).

*Testamento
annexo* to un-
successful op-
ponent of will.

Testator by his will divided the residue of his personal estate between his son, his only next of kin, and his three illegitimate daughters, who were minors; they propounded the will by their guardian; the son unsuccessfully opposed it, and was condemned in costs; he had a larger interest in the specific legacies than the minors, and it was proved that in fact there was no residue: the Court refused, under these circumstances, to make the grant to the guardian of the minors, but decreed it to the son; it also declined to make the grant to the son conditional on his payment of the guardian's costs, as by so doing it would delay the payment of the legacy to the widow (*m*).

Residuary
legatee for
life.

When there is a residuary legatee for life and a legatee substituted, the usual course is to grant the administration to the legatee for life; but the Court will not adopt this course, if by doing so it would involve the determination of a difficult point in the construction of a will (*n*).

Probate of the will of R. C. had been granted by the Peculiar Court of W. to his executor R. S. C., who was now abroad, and supposed to be in Australia: R. C., at the time of his death, had assets out of the jurisdiction of the Peculiar Court of W.: a motion to grant administration with the will annexed, limited to receiving such last-mentioned assets under sect. 88 of the Court of Probate Act, 1857, to the residuary legatee of R. C., refused. *Semble*,

(*h*) *In the goods of Jenny Wat-
son*, deceased, 1 Sw. & Tr. 110.

(*l*) *Podmore v. Whatton*, 3 Sw.
& Tr. 449.

(*m*) *Sanbridge v. Hill*, 40 L. J.,
P. & M. 27.

(*n*) *Brown v. Nicholls*, 2 Robert.
399.

that on the Court being satisfied that the executor of R. C. was in a distant country, it would grant administration to his residuary legatee (o). To whom granted.

A. died leaving a will, whereof he appointed B. executor and residuary legatee: B. proved the will and afterwards became bankrupt, and subsequently died intestate, leaving part of the estate of A. unadministered: at the time of his bankruptcy B. was a creditor of A.; the Court granted administration, with the will annexed, of the unadministered estate of A. to the assignee in bankruptcy of B. in the character of assignee of a residuary legatee: *semble*, that the assignee would also have been entitled to the grant as assignee in bankruptcy of a creditor of A. (p). Assignee of residuary legatee.

The Court will make a limited grant to the personal representative of a legatee, the executor being out of the jurisdiction, though the legatee only is mentioned in the statute (q).

When the wife is residuary legatee, the court will pass over a husband who has no separate interest in the property of his wife, and will, without notice to him, under 20 & 21 Vict. c. 77, s. 73, grant administration, with the will annexed, to the nominees of the residuary legatee (r). 20 & 21 Vict. c. 77, s. 73.

Where A. bequeathed the residue of his personal estate to W., his sole executor and trustee, in trust for such persons as B., a married woman, should appoint, and in default of appointment to B. absolutely: W. renounced: by deed B. appointed and assigned to M. and J., who accepted the trust, all her interest under the will, and her right to letters of administration with the will annexed, in order that they might obtain such letters of administration. Letters of administration, with the will annexed, were granted to M. and J. (s). To nominee of party entitled to appoint.

(o) *In the goods of Robert Cooper*, deceased, 1 Sw. & Tr. 66. (r) *In the goods of Pine*, 36 L. J., P. & M. 95; 1 Law Rep., Prob. 388.

(p) *Downward v. Dickenson*, 3 Sw. & Tr. 364.

(q) 38 Geo. III. c. 87. *In goods of Thomas Collier*, 2 Sw. & Tr. 444.

(s) *Martindale, In goods of*, 27 L. J., P. & M. 29.

Administra-
tion *testamento*
annexo to
trustee.

Where A., by his will, gave B., his wife, a life interest in all his property, and directed that at her death it should be sold and divided amongst his six children; he further named his wife sole executrix and appointed C., his eldest son, trustee to carry into effect the division of the property on her death; B. disposed of the property for 600*l.*, and this sum, with 130*l.* of her own, she invested in the purchase, in her own name, of two leasehold houses; she died intestate, leaving C. and five other children her next of kin, her surviving; there was no other property than the two leasehold houses: the Court refused to make a joint grant of administration to C. and the nominee of the other next of kin, but made the grant to C. alone, he giving justifying security (*t*).

Widow and
next of kin.

Next to the residuary legatee (or those who stand in his place) come the widow, or next of kin, but when they have no interest, administration may be granted to those who have, for instance, to creditors or legatees. In such case the widow and next of kin must of course be cited (*u*).

But the court will not grant administration, with the will annexed, to a creditor under 20 & 21 Vict. c. 77, s. 73, by reason of the insolvency of the estate of the deceased, if the widow and residuary legatee be willing to take it, much less will it do so if the insolvency is disputed (*x*).

To executor of
feme covert.

The court will make a general grant of administration, with the will annexed, of the undisposed property under the will of a married woman, to the executor named in her will, such married woman having survived her husband and not having republished her will, provided her next of kin and the parties entitled in distribution consent (*y*).

Creditor under-
taker.

On the death of testator, plaintiff, at the request of the daughter and universal legatee named in the will, who

(*t*) *Stainton, In goods of*, 40 L. J., P. & M. 25.

(*x*) *Hawke v. Wedderburn*, 37 L. J., P. & M. 33.

(*u*) *West v. Willby*, 3 Phil. 381;
Snape v. Webb, 2 Lce, 411.

(*y*) *In the goods of Thorold*, 36 L. J., P. & M. 119.

afterwards became a lunatic, undertook to provide for and make arrangements in respect to the funeral:—Held that by reason of his services therein, and the expenses he had incurred, plaintiff was entitled as a creditor to obtain administration of the goods of the deceased (*z*). To whom granted.

The Court will grant administration, with papers annexed, to a person as attorney of an executor according to the tenor, without requiring a regular power of attorney, such person being clearly authorized by letter from that executor to act; the executor of the residuary legatee (who was also executor, but did not take probate) having consented (*a*). Attorney.

The deceased left her property to her sister, a married woman, for her sole use and not to be liable to the control of her husband; she appointed no executor; the husband of the legatee refused, except on certain unreasonable terms, to consent to her taking administration or to join in the bond; the Court, under 20 & 21 Vict. c. 77, s. 73, decreed administration to the attorney of the legatee without the sanction of the husband (*b*). Attorney of married woman.

When the person entitled to administration is in England, a grant of administration will not be made to his attorney, unless the estate consists solely of property held in trust (*c*).

When granted.] Similarly as in probate and simple administration, after the lapse of three years from the death of the deceased the reason of the delay must be certified; and should the certificate be unsatisfactory (or, in a country case, should it be one of personal application), the Registrars are to require such proof of the alleged cause of delay as they see fit; if it be a country case, the district Registrar is directed to require an affidavit, or to communicate with the Registrars of the principal registry (*d*). Cause of delay.

(*z*) *Newcombe v. Beloe*, 36 L. J., P. & M. 37. P. & D. 538.

(*a*) *Re Ormond*, 1 Hag. Ecc. R. 145. (*c*) *In the goods of Buller*, 39 L. J., P. & M. 26.

(*b*) *In the goods of Warren*, 37 L. J., P. & M. 12; 1 Law Rep., (*d*) Rule 45, P. R., Non-C.; Rule 53, D. R.

When granted. As in probate, no "letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge, or by order of two of the Registrars" (*e*).

The practice in obtaining the administration, with the will annexed, is similar to that of obtaining probate, the administrator standing in the place of the executor, with the important exception that he has to give security for the due administration of the estate. His affidavit also is somewhat different, see form, Appendix; he has (as an administrator has) "to clear off all persons having a prior right to the grant," that is to say, he has to show in his affidavit how these interests, which would naturally precede his, have been disposed of, so that his claim stands first or among the first (*f*).

SIMPLE ADMINISTRATION.

If the deceased be intestate, the course is for the next of kin to obtain administration. In ancient times the moveable, *i. e.*, personal, property of deceased persons was in general taken care of by the bishop of the diocese.

From this root grew up the various jurisdictions for granting letters of administration, which were transferred by the fourth section of 19 & 20 Vict. c. 77, to the present Court of Probate, and which are now exercised by that Court.

Letters of administration are an authority granted by the Court to an individual, and are in the following form on a large sheet of parchment in a hand similar to that used for a probate, and sealed with the seal of the Court:—

Form of.

"Be it known that on the day of , 18 ,
letters of administration of all and singular the personal
estate and effects of A. B., late of , deceased, who

(*e*) Rule 43, P. R., Non-C.; Rule
51, D. R.

(*f*) Rule 37, P. R., Non-C.; Rule
43, D. R.

died on 18 , at intestate, were granted Letters. by her Majesty's Court of Probate to C. D., the lawful widow and relict (*as the case may be*) of the said intestate, she having been first sworn well and faithfully to administer the same by paying the just debts of the said intestate, and distributing the residue of his estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof, whenever required by law so to do.

Signed, E. F.,
Registrar."

(L.S.)

On perusing this document with care, it will be seen, as in the grant of probate, that it does not purport or profess to be a letter or letters of administration itself, but a mere record that letters of administration have been granted. No other document, however, in practice issues, and it therefore is usual to term the document itself, above set out, as the "*letters of administration*." The plural number is used, probably, from an erroneous translation of the original Latin "*literæ administrationis*."

To whom granted.] This is divided into two heads, first, the character of the applicant as married woman, minor, &c.; secondly, his relationship to the deceased.

First, as to the character of the applicant. Originally the Ordinary was himself the administrator, but this practice became, in very early times, disused, and the Ordinary used to appoint deputies at his discretion; to remedy this we find it enacted that the Ordinary "shall depute the next and most lawful friends of the deceased to administer the goods" (*g*); the "*next and most lawful friends*" is explained by the 21 Hen. 8, c. 5, to mean the next of kin (*h*). Subsequently the discretion of the Ordinary is

(*g*) 31 Edw. III. st. 1, c. 1.

(*h*) *Walton v. Jacobson*, 1 Hag. Ecc. R. 346.

To whom
granted.

still further limited, and he is directed to grant administration to the widow or the next of kin of the deceased, or to any or both of them at his discretion (*i*).

But this meant a legal discretion; for the Ordinary, when acting officially, had no private or personal discretion respecting the grant of administration (*k*).

Under these statutes, the extinct jurisdictions were bound to allow the grant to the "next and most lawful friends of the deceased," but the present Probate Court, which inherits their power, has a further liberty granted to it, where the insolvency of the estate, or other special circumstances, make it necessary or expedient to pass over the persons who, under the previous law, would have been entitled to the grant (*l*).

Disqualifica-
tions.

The personal disqualifications for the office of administrator (as for that of executor) are few, but as an administrator is required to give a bond as security for the due performance of his office, it follows that all persons who are unable to execute this bond are in fact disqualified. A minor is, therefore, disqualified (*m*); even when assisted by his uncle his curator, lawfully appointed according to the law of the domicile (*n*).

Minor.

But a grant can be legally made to a minor, although it is not the practice of the Court to do so.

The cancelling of such grant is in the discretion of the Court, which will not do so unless there is an appearance of fraud in the obtaining it, or unless it would occasion irreparable injury (*o*).

Married
woman.

A married woman may be an administrator if her husband assent, for as the practice of the Court requires him to execute the bond he virtually has the power of disqualifying his wife; but see *Sutherland, In goods of*, infra (*p*).

(*i*) 21 Hen. VIII. c. 5, s. 3.

(*k*) *Canterbury (Archbishop of)*
v. House, Cowp. 140; Lofft, 622.

(*l*) P. C. Act, 1857, sect. 73.

(*m*) *Manuel*, deceased, *In goods of*, 13 Jur. 664.

(*n*) *Duchesse d'Orleans, In goods of*, 7 W. R. 269.

(*o*) *Dunphy v. Dunphy*, 3 Ir. R., Eq. 251. See also *Re the Countess da Cunha*, supra.

(*p*) 31 L. J., P. & M. 126.

Nor will it be granted to her attorney on her proxy alone, for a motion for administration, with the will annexed, to the attorney of a residuary legatee, a married woman, upon her proxy alone, was rejected (*q*). To whom granted.
To attorney of married woman.

A. bequeathed the whole of his property to W. (whom he appointed his sole executor) in trust for such person as B., a married woman, should by any writing under her hand, or by her will appoint, and in default of appointment for B.'s separate use absolutely: W. renounced probate of the will, and B., by indenture of appointment, assigned all her interest under the said will and her right to letters of administration, with the said will annexed, to H. and I. for the purposes in the same indenture mentioned; the Court granted administration, with the will annexed, to H. and I. (*r*). To assignee of.

In this case the husband of C. seems to have assented, or, at all events, not to have objected to her appointment.

But administration, with the will annexed, was granted (under the 73rd section of the 20 & 21 Vict. c. 77) to the nominees of the residuary legatee, who was a married woman, without notice to her husband, the residue being settled to her separate use, and at her absolute disposal (*s*). To nominee of.

A married woman was the only legatee of a will, which contained no appointment of an executor; her husband refused to consent to her taking the grant of administration with the will annexed, or to join in the bond; the property being left to her separate use, the Court made the grant to her attorney without the husband's consent (*t*).

Where the husband of a married woman, who is entitled to letters of administration, refuses to execute the administration bond or to assist in her obtaining the grant, the

(*q*) *Bubbers v. Harby*, 3 Curt. Prob. 388.
50.

(*t*) *In the goods of Warren*, 1 L. R., Prob. 538; 37 L. J., P. & M. 12.

(*r*) *In goods of John J. Martindale*, 1 Sw. & Tr. 8.

(*s*) *In the goods of Pine*, 1 L. R.,

To whom
granted.

Court will grant administration to her, and allow a third person to execute the bond (*u*).

Renunciation
by wife.

On the other hand, she cannot deprive her husband of his right by renunciation; "if a wife renounces her right to administration, the grant is made to the husband, for he has an interest, and the grant must follow the interest, and the wife cannot by renouncing deprive her husband of his right to the grant;" therefore, a husband is entitled to take out administration in right of the wife, to her next of kin deceased, intestate, and her renunciation in favour of a third person, *e. g.*, a creditor of the deceased, will not deprive the husband of his right (*v*).

A wife cannot prejudice her husband's interest, by renouncing her right to administration (*w*). In such a case, where the wife refused to sign a proxy, the Court admitted a proxy from her husband alone (*x*).

Lunatics, &c.

Lunatics, idiots, and the like, being incapable of contracting, are incapable of executing the bond, and are therefore still more disqualified for administrators than for executors.

Alien.

Bankrupt.

On the other hand, an alien may be an administrator (*y*), so may an insolvent (*z*); but, though not incapacitated, a bankrupt or insolvent is not preferred as an administrator; and where administration was claimed by two persons in an equal degree of relationship one of whom had been twice bankrupt, and paid no dividend, the Court granted administration to the other, and condemned the unsuccessful applicant in costs (*a*).

So, where a person died leaving a brother and three sisters surviving him; the brother had been twice bankrupt, the parties applying for administration were, on the one hand, the brother, and on the other, two of the sisters,

(*u*) *Sutherland, In goods of*, 31 L. J., P. & M. 126.

(*v*) *Haynes v. Matthews*, 1 Sw. & Tr. 460.

(*w*) *Cook v. Comper*, 2 Lee, 390.

(*x*) *Cook v. Comper*, 2 Lee, 487.

(*y*) *Caroon's case*, Cro. Car. 8.

(*z*) *Havers v. Havers*, Barnardiston, Ch. Ca. 23.

(*a*) *Bell v. Tinniswood*, 2 Phill.

22.

with the assent of the third; it was held that the Court, where it has a discretion, will, *cæteris paribus*, grant administration to a male in preference to a female, but not so, when such grant is opposed by those who have a majority of interests in the property (*b*). To whom granted.

With regard to felons, there seems to have been some doubts. As the original statute directed administration to be given to the next and *most lawful* friends of the deceased, it appears to have been considered that a felon could not come within this definition (*c*). But the contrary doctrine appears to have been held in another case (*d*). Felons.

These doubts, however, if any exist, would seem now to be set at rest by the 33 & 34 Vict. c. 23, at least as far as the question of forfeiture is concerned.

Secondly, the relationship of the applicant to the deceased.

The following is the order in which next of kin stand in respect of their right to obtain administration :— Order of preference.

1. Husband or wife.
2. Child or children.
3. Grandchild or grandchildren.
4. Great grandchildren.
5. Father.
6. Mother.
7. Brothers and sisters.
8. Grandfathers or grandmothers.
9. Nephews and nieces, uncles, aunts, great grandfathers or great grandmothers.
10. Great nephews, great nieces, &c., all being equally entitled who stand in the same degree ;—

And it must be remembered that in all cases the next of kin means the next of kin at *the time of the death of the deceased*, not at the time of making the application for the grant.

(*b*) *Iredale v. Ford*, 1 Sw. & Tr. 305.

(*c*) *Hensloe's case*, 9 Rep. 36.

(*d*) *Caroon's case*, Cro. Car. 8.

To whom
granted.
Spouse.

As to a husband or wife even where the marriage is voidable, the survivor, should the marriage be unquestioned during the lifetime of both parties, is entitled to the administration (*e*).

Husband.

The husband is entitled to the grant of administration it is said, by the common law, though this seems somewhat open to dispute, as originally the person who administered was the Ordinary himself, and the administrator was his deputy. See 31 Edw. 3, c. 11, Ordinaries to "*depute*." It is more probable that it was on the construction of the statute that the husband was held to be the next and most lawful friend. It is, however, clear that it had long been the custom previous to the enacting of the 22 & 23 Car. 2, c. 10, to grant administration to the husband, and by the 29 Car. 2, c. 3, s. 25, this custom receives a legislative sanction, since the husbands of *femes covertes* dying intestate "may demand and have administration of their rights, credits and other personal estate, and recover and enjoy the same as they might have done before the making of the 22 & 23 Car. 2, c. 10;" and see 1 Jac. 2, c. 17, s. 5.

Husband's
representative.

The right of a husband to administration of his deceased wife's estate is such, that on the widower dying without taking out administration to his deceased wife, it survives, and the Court will grant administration to his representative and not to the next of kin of the wife (*f*).

Where, however, the husband's whole interest determines with his life, the course is to grant administration to the representatives of the wife, as "the grant should follow the interest" (*g*).

Though a wife has a separate estate at her disposal, and makes a will, yet, if there be no assent of the husband, he shall have the administration (*h*).

But probate of the will of a *feme covert* (supposed at the

(*e*) *Elliott v. Gurr*, 2 Phill. 16.

(*g*) *Ibid*. 770.

(*f*) *Fielder v. Hangers*, 3 Hag. Ecc. R. 769.

(*h*) *R. v. Bettisworth*, Str. 1118.

time of the grant to have been sole) was revoked, and administration granted to *her* next of kin, the husband having died after her, and his representative assenting, the administration of a *feme covert's* goods, left unadministered by the husband, having been held in several cases to belong, under the 31 Edw. 3, st. 1, c. 11, and 21 Hen. 8, c. 5, to the next of kin of the wife at the time of her death, though the right to the property is in the representative of the husband (*i*). To whom granted.

So, where a wife died leaving a chose in action, and the husband, administrator, died without altering the property, and made a will, and his administrator, with will annexed, took out administration *de bonis non* to the wife; that administration was called in by the next of kin to the wife and revoked, the property not having been altered by the husband (*k*).

So, after the death of the husband, administrator of his wife, administration *de bonis non* was granted to her next of kin in preference to the husband's representative (*l*).

This practice, however, appears to have been first settled in 1736, by the case of *Hole v. Dolman* (*m*); as prior to that case it seems to have been the course of the office to grant it *primo petenti*, indifferently to the one or the other.

Where A. died in 1831, being at the time of her death entitled to the reversion of a share of 200*l.*, leaving her husband B., and several children by him, her surviving: the husband subsequently married C., and died in 1832 intestate, leaving C. and several children by his two marriages him surviving: D., a creditor, took out administration to his effects; in 1857, A.'s reversion came into possession, D. renounced his right to administer to A.'s estate; on application to the Court to grant administration Husband's representative.

(*i*) *Gill, In goods of*, 1 Hag. Ecc. R. 341, and cases there cited. (*l*) *Kinlinde v. Cleaver*, 2 Hag. Ecc. R., App. 169.

(*k*) *Kinaston v. Mills*, 2 Hag. Ecc. R., App. 158. (*m*) 2 Hag. Ecc. R., App. 165.

To whom
granted.

of it to C., as B.'s relict:—Held the children by A., and not C., were entitled to the administration (*n*).

Where the husband has survived the wife, and died intestate, without administering to her estate, his next of kin must constitute themselves his legal personal representatives, before they have any claim to administer to the wife's estates (*o*).

Husband
passed over.

Where the deceased and her husband had their domicile at the Cape of Good Hope, and in accordance with the laws of that colony previous to their marriage they executed a deed of non-community of property, and such deed was duly registered, the Court of Probate granted administration to the brother and next of kin of the deceased to the exclusion and without the citation of the husband (*p*).

Where M. W., having been deserted by her husband, had obtained a protection order under 20 & 21 Vict. c. 85, s. 31, by reason of such desertion; on her death, in the lifetime of her husband, intestate, the Court decreed letters of administration to be granted, limited to such personal property as she had acquired or become possessed of since the desertion, without specifying of what that property consisted, to one of her next of kin (*q*).

Husband not
cited.

In order to obtain administration of the effects of a married woman who dies intestate, after obtaining a protection order from the Court of Divorce, it is not necessary that the husband should be cited (*r*).

Husband when
passed over.

Administration of the effects of a married woman who had obtained a protection order under 20 & 21 Vict. c. 85, s. 21, and died in the lifetime of her husband, was granted

(*n*) *In the goods of Jane Bell*, 1 Sw. & Tr. 288.

(*o*) *In the goods of Jane E. Crause*, 1 Sw. & Tr. 146.

(*p*) *Probart*, *In goods of*, 36 L. J., P. & M. 71.

(*q*) *In the goods of Maria Worman*, deceased, 1 Sw. & Tr.

513; see also *Faraday*, *In goods of*, 2 Sw. & Tr. 369; 20 & 21 Vict. c. 85, s. 21.

(*r*) *Brighton*, *In goods of*, 34 L. J., P. & M. 55; *Farraday*, *In goods of*, 31 L. J., P. & M. 7, distinguished.

to a guardian selected by the children, passing by the husband, upon justifying security being given (*s*). To whom granted.

So, where a married woman obtained a protection order under 20 & 21 Vict. c. 85, and died intestate, leaving her husband and children by him, who were minors, her surviving; the Court, in the lifetime of the father, who was abroad, granted administration for the use and benefit of the children to their uncle, who had been duly elected by them as their guardian for that purpose (*t*).

Where a woman, whose marriage had been dissolved on the ground of her husband's adultery and desertion, died intestate, leaving issue of the marriage one child, a minor, the Court decreed administration to the grandmother of the child, passing by the father, upon a copy of the decree dissolving the marriage being filed, and also copies of letters from him showing that he was unfit to take the grant (*u*).

But where a husband, by a deed of separation, has resigned all claim to the property of his wife, it was questioned how far he was thereby excluded, upon her death in his lifetime, from taking any interest, as her representative: in such a case the Court will not grant administration to the next of kin of the wife unless the husband be cited (*v*).

The wife of a felon convict died intestate, leaving personal property acquired by her subsequently to her husband's conviction:—Held, that such property belonged to the crown and not to the next of kin of the intestate to whom the grant should go. This was before the recent statute 33 & 34 Vict. c. 23, abolishing forfeiture (*x*). Husband felon.

If the intestate leave a widow, she stands in the next Widow.

(*s*) *In the goods of Stephenson*, 36 L. J., P. & M. 20.

(*t*) *Weir, In goods of*, 31 L. J., P. & M. 88.

(*u*) *Hay, In goods of*, 35 L. J., P. & M. 3.

(*v*) *Lord Oranmore, In goods of*, 30 L. J., P. & M. 183.

(*x*) *Coombs v. H. M.'s Proctor*, 2 Rob. Ecc. Rep. 547; 19 Jur. 820;

Reg. v. Whitehead, 2 M. C. C. R. 181; 9 C. & P. 249.

To whom
granted.

relation and takes before any one else. This comes from the words of the 21 Hen. 8, c. 5, s. 3, which directs the Ordinary to grant administration to the widow, *or* to the next of kin, *or* to both, as by his discretion shall be thought good. Previous to this statute, the wife was not entitled to administration (*y*). If the widow die before administration is granted to her, her right is not such a one as will necessarily pass to her representatives, and hence it appears that there must be some intrinsic difference between the widower's right to administration and that of the widow. See *supra*, p. 168.

Widow passed
over.

The Court will grant administration to a son, in preference to a widow, who had been divorced for adultery committed by her (*z*).

So where a wife, separated from her husband by deed, contracted during his lifetime a second marriage, and cohabited with the person, with whom she so contracted an invalid marriage, until the death of her real husband, she was held to have forfeited her right to administration of her deceased husband's estate, and the grant was made to his brother (*a*).

The Court is precluded by the 21 Hen. 8, c. 5, s. 3, from making a joint grant of administration to a widow and one of the persons entitled in distribution, even with the consent of the next of kin, and of all other persons entitled in distribution; and the 73rd section of the Probate Court Acts does not enlarge the powers of the court in such a case (*b*).

So the Court refused to grant administration jointly to the widow and son, no special reason being given for the application, and some of the next of kin being of an age at which they were incapable of consenting to such a grant (*c*).

(*y*) *Hensloe's case*, 9 Rep. 36.

(*z*) *Davies, In goods of*, 2 Curt. 628; see also *Pettifer v. James*, Bunbury, 16.

(*a*) *Chappell v. Chappell*, 3 Curt.

429.

(*b*) *In the goods of James Browning*, deceased, 2 Sw. & Tr. 634; 31 L. J., P. & M. 161.

(*c*) *Newbold, In goods of*, 36 L. J., P. & M. 14.

But the Court is not bound to give the grant to the widow, for the 21 Hen. 8, c. 5, s. 3, leaves it to the discretion of the Ordinary, to grant administration to the widow *or* the next of kin (*d*).

To whom granted.
Widow *or* next of kin.

Therefore, when it was moved for a *mandamus* to the official of the Bishop of Gloucester to commit administration to the widow of an intestate, the Court refused the motion, saying that it would be to deprive the Ordinary of his election in granting it to her, or the next of kin (*e*).

The next of kin has by law the same title to administration as has the widow, though under ordinary circumstances the practice is to make the grant to the widow (*f*).

The Court will, on sufficient cause shown by the next of kin, on motion, exercise its discretionary power, and grant administration to such next of kin in preference to the widow (*g*).

Widow excluded.

The Court granted administration to the plaintiff, as the natural and lawful child of the deceased, she having been born six months after the marriage of her parents (*h*).

Children.

The children stand in the first degree from the intestate in the same degree as the father, but the children are preferred, and although the grandchild or great-grandchild is further off from the intestate than the father, yet, conformably with the civil law, the most remote lineal descendant has priority over the next of kin in the ascending line, *i. e.*, the grandchild or great-grandchild would be preferred to the father; they seem, indeed, to be considered as the more direct representatives of the deceased. It must also be remembered that all children stand in equal degree, a male, indeed, is preferred as being more capacitated for the office, but primogeniture gives no right (*i*).

(*d*) *Dew v. Clark*, 1 Hag. Ecc. & Tr. 489; 33 L. J., P. & M. 149.
R. 312. (*h*) *Turner v. Turner*, 36 L. J.,

(*e*) *Anon.* 1 Str. 525. P. & M. 85.

(*f*) *Corser, In goods of*, 31 L. J., (*i*) *Earl of Warwick v. Gre-*
P. & M. 170. *ville*, 1 Phill. 123.

(*g*) *In goods of Anderson*, 3 Sw.

To whom
granted.

To other next
of kin.

Primo petenti.

Sole adminis-
tration.

Joint grant re-
fused.

Male preferred.

With respect to the other next of kin they take in their order, and it is the rule of the Court, where there are several equally entitled, to make the grant to the first applicant, without requiring the consent or renunciation of those who are entitled in the same degree. The grant is made of the whole administration, and no power is reserved for other administrators to come in and join as in the case of executors. Another rule is that when several apply, the Court will not grant letters to more than three persons, unless, indeed, some special circumstances induce it to forego the general rule. Indeed, it prefers a sole administration wherever possible. For "the Court prefers, *cæteris paribus*, a sole to a joint administration, because it is infinitely better for the estate; administrators must join and be joined in every act, which would not only be inconvenient to themselves, but what is of more consequence, inconvenient to those who have demands on the estate either as creditors or as entitled in distribution" (*h*).

The Court never makes a joint grant if it can possibly avoid it. For where the deceased died intestate, leaving a widow, and several minor children by a former wife; during his lifetime he had been assisted in his business by his brother; his widow was unacquainted with its management and she was desirous that the brother (who was elected by the children their guardian for the purpose) should be joined with her in the grant; the Court held that the circumstances did not warrant a joint grant and refused the application (*l*).

Cæteris paribus, the male is preferred to the female in a contest for a grant of administration, but the female when *prior petens*, is preferred to the male (*m*).

Of the two rules for the guidance of the discretion of the Court in granting administration, where parties in equal

(*h*) *Earl of Warwick v. Gre-*
ville, 1 Phill. 126.

L. J., P. & M. 29.

(*l*) *Richards, In goods of*, 49

(*m*) *Cordew v. Trasler*, 34 L. J.,
P. & M. 127.

degree dispute it, viz., that “*cæteris paribus*, the male is preferred to the female,” and “that the grant will follow the majority of interests,” the latter is the more stringent (*n*). To whom granted.
Majority of interest.

Administration may be granted to the nephew, on the renunciation of his father, the brother and sole next of kin of the deceased (*o*). Next of kin.

But the next of kin cannot, as it were, indorse away their right to a nominee. For the Court refused to grant administration to a person not having any interest in the estate, merely because the next of kin had agreed to renounce in his favour (*p*).

A. died in 1831 an infant, leaving his father the only person entitled to his personal estate: B. died leaving a will, in which he named his wife C. and D. executors, and C. universal legatee: B.’s will had never been proved. C. died leaving a will in which she named executors, and all her children, excepting E., residuary legatees: D. renounced probate of B.’s will, and the executors and residuary legatees of C. renounced their right to administer to A.’s estate, and consented to the administration going to E.: the Court held it could not make the grant to E. unless he first represented B. (*q*).

The next of kin of an intestate are entitled to administration in preference to creditors, and as a general rule will not, at the instance of creditors, be required to give justifying security (*r*).

Where administration is contested by two persons of the whole blood in equal degree of relationship, the rule is to grant it to the one who unites the majority of interests; but where the contest is between one of the whole blood Half blood.

(*n*) *Iredale v. Ford & Bramworth*, 1 Sw. & Tr. 305. P. & M. 91.

(*q*) *Allen, In goods of*, 3 Sw. &

(*o*) *Re Keane*, 1 Hag. Ecc. R. 692. Tr. 559; 34 L. J., P. & M. 1.

(*r*) *John v. Bradbury*, 36 L. J.,

(*p*) *Blake, In goods of*, 35 L. J., P. & M. 33.

To whom
granted.

and one of the half blood, the one of the whole blood is to be preferred (*t*).

The guardian of a minor of the whole blood is entitled to a grant of administration in preference to the half blood (*u*).

Crown
nominee.

Where there are no next of kin, the crown is entitled to the grant, in accordance with both the feudal principle of escheat and the maxims of the civil law. As a bastard is *nullius filius*, he can have no next of kin, unless he leaves lawful issue. When, therefore, a bastard dies unmarried, his effects revert to the crown; but where a will does not dispose of the residue, the legatees are entitled to administration with the will annexed, limited to the property disposed of by the will; the next of kin without the consent of the legatees being only entitled to a grant, save and except such property, or to a *caterorum* grant. If the deceased dies a bastard and unmarried, the crown takes the same grant as next of kin (*x*).

When intestate
bastard.

The practice of the crown is to divide the effects of an intestate bastard among the natural relatives, and to retain only a percentage as under (*y*):—

If property under £500	.	.	.	One-tenth.
„ „ 1,000	.	.	.	One-eighth.
„ „ 5,000	.	.	.	One-sixth.
„ „ 10,000	.	.	.	One-fourth.
If £10,000 or upwards	.	.	.	One-third.

The 56th section of the 11 Geo. 4 & 1 Will. 4, c. 20, enacts, that “When any petty officer or seaman shall die intestate, leaving any wages, prize money or other allowances of money of any kind due to him in respect of services in her Majesty’s navy, the same shall not be paid to

(*t*) *Mercer v. Morland*, 2 Lee, 499.

(*u*) *Stratton v. Tinton*, 31 L. J., P. & M. 48.

(*x*) *In the goods of Rhoades*, 35 L. J., P. & M. 125.

(*y*) See Royal Warrant, 25 July, 1771.

his personal representatives, except upon letters of administration obtained in the following manner," &c. The section then points out the course to be adopted by the person claiming administration; and the inspector of seamen's wills, on being satisfied with the claim, is directed to transmit to a proctor a certificate thereof; the crown not being expressly named in that section, it is not bound by it; and this case must be governed by the principles applicable to any other case in which the nominee of the crown applies for administration of the effects of a bastard intestate.

To whom granted.

A general grant of administration of the effects of a seaman in the navy, who died a bachelor, bastard and intestate, having wages or prize money due to him, will not be granted to the solicitor of the Treasury for the use of the crown, unless the provisions of the 11 Geo. 4 & 1 Will. 4, c. 20, s. 56, have been complied with, those provisions, although they do not in terms affect the crown, being binding on the Court of Probate (z).

To crown.

In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's procurator-general (or in case the deceased died domiciled within the duchy of Lancaster, to the solicitor for the duchy in London), in order that he may determine whether he will interfere on the part of the crown; and no grant is to be issued until the officer of the crown has signified the course he thinks proper to take (a).

In the case of persons dying intestate without any known relation, a citation must be issued against the next of kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased, and the

When no relation known.

(z) *In the goods of Bevan*, 35 L. J., P. & M. 25.

(a) Rule 75, P. R., Non-C.

To whom granted. service thereof upon them shall be effected as required by Rule 70, P. R. Non-C. Such citation must also be served upon the Queen's proctor, or upon the solicitor for the duchy of Lancaster, as the case may require (*b*).

When deceased a felon. The recent statute, by abolishing forfeiture (*c*), seems to have put an end to all the old law on how far administration could be taken out to a deceased felon's effects, and to place them on the same footing as other persons.

To creditor. A person, who is entitled to administration as next of kin, cannot take the grant as a creditor (*d*).

But it was held that a husband may take a grant, with the will annexed, as creditor, although he has signed a renunciation executed by his wife as residuary legatee (*e*).

Right of creditor. "The right of a creditor is only this; he cannot be paid his debt till a representation to the deceased is made; he can then call on all who have a right to administer; before an administration is granted, if a will be produced, the creditor has no right to contradict or deny it; for if there is a will, or a next of kin claims administration, then a person offers to make himself a representative, and the creditor gets all that he has a right to" (*f*).

Creditors have no right to interpose in the grant of an administration between a widow and the next of kin; the practice is to grant administration to the widow, unless some objection exists against her (*g*).

Again, the Court will not grant administration, with the will annexed, to a creditor by reason of the insolvency of the estate of the deceased, if the widow and residuary legatee are willing to take it; much less will it do so if the insolvency is disputed (*h*). Therefore it is not competent to a creditor to dispute the articles of a will (*i*).

(*b*) Rule 76, P. R., Non-C.

(*c*) 33 & 34 Vict. c. 23, s. 1.

(*d*) *Corsers, In goods of*, 31 L. J., P. & M. 170.

(*e*) *Biggs, In goods of*, 1 L. R., P. & D. 595. But see *Southwell v. Findley*, 33 L. J., P. & M. 21.

(*f*) *Elme v. Da Costa*, 1 Phill. 177.

(*g*) *Stretch v. Pynn*, 1 Lee, 30.

(*h*) *Hawke v. Wedderburne*, 37 L. J., P. & M. 33; 16 W. R. 712.

(*i*) *Burroughs v. Griffiths & another*, 1 Lee, 544.

A creditor, however, is entitled to an inventory of the effects of an intestate (*j*). And it is sufficient if the creditor swear to a particular sum *and upwards* being due to him, as the Court will not try the validity of the debt (*k*). To whom granted.

But, though he has a right to call for an inventory, the court has no jurisdiction at his suit to examine the particulars of an account (*l*).

Administration with the will annexed was granted to a person, as creditor for funeral expenses, who had undertaken the funeral of the deceased at the request of the universal legatee named in the will, on his giving justifying security (*m*). Creditor, who is.
Debt accruing after death.

So a surety who, *after the death of the principal*, pays off the debt is (in case of intestacy) entitled to administration as a creditor (*n*). But administration of an intestate's estate will not be granted to a person who, after the death of the intestate, buys up a debt due from him (*o*). Even if his debt is barred by the Statute of Limitations, a creditor is allowed to cite the next of kin to accept administration or to show cause why it should not be granted to him (*p*). And, on their not appearing, he is entitled to the grant, but the bond must contain a condition that he distribute the assets rateably amongst all the creditors (*q*). When debt barred by Statute of Limitations.

Where an application is made for a grant of administration to the secretary of an association, on the ground that the deceased was indebted to the association, the Court ought to have such information of the constitution of the association as would show that the secretary can be treated as a creditor (*r*).

Administration of the effects of a pauper, who died

(*j*) *Timbrell v. Rice & another*, 1 Lee, 471.

(*k*) *Smith v. Pryce*, 1 Lee, 569.

(*l*) *Brown v. Atkins*, 2 Lee, 1.

(*m*) *Newcombe v. Beloe*, 1 L. R., Prob. 314; 36 L. J., P. & M. 37.

(*n*) *Williams v. Jukes*, 34 L. J., P. & M. 60.

(*o*) *Macnir v. Coles & others*, 33 L. J., P. & M. 175.

(*p*) *Combs, In goods of*, 35 L. J., P. & M. 78; 1 L. R., Prob. 193.

(*q*) *Combs v. Combs*, 35 L. J., P. & M. 21; 1 L. R., Prob. 288.

(*r*) *In the goods of Thomas Fairweather*, 2 Sw. & Tr. 588.

To whom granted. chargeable to a union, was granted to the guardians of the union as creditors under 12 & 13 Vict. c. 103, s. 16 (*s*).

16 & 17 Vict. c. 97, s. 104. Administration to poor law guardians refused. The deceased was a pauper lunatic, and from 1862 until his death in 1870 the cost of his maintenance in the county asylum was paid by the union to which he belonged; on the death of his wife in 1865 he became entitled to a sum of 400*l.*, but no steps were taken by the guardians of the union to obtain an order from the justices, under 16 & 17 Vict. c. 97, s. 104, to make the fund applicable to his maintenance: the Court refused to make them a grant of administration as creditors of the deceased (*t*).

Husband of deceased creditor. A female, having taken administration to the estate of the deceased as a creditor, married and died; under the administration she got in a considerable portion of the estate of the deceased, and paid some of the debts, but did not set apart any particular fund in payment of her own debt: held, that the husband was not entitled in his own right as a creditor, but only as the representative of his wife, to take administration of the unadministered effects of the deceased (*u*).

Creditor's mortgagee. E. G. being a married woman and having an interest under her father's will, expectant on the death of his widow, joined with her husband in 1841, in executing a mortgage of such interest to B., to secure a running account: E. G. died in 1851, and her husband in 1853, neither possessed of any other property; on the death of her father's widow, a representative of E. G. was required to release the trustees; B.'s debt being larger than E. G.'s interest under the will, the Court granted administration of the goods of E. G. to B. as mortgagee (*x*).

Creditor, official assignee of. A. in 1813 assigned certain bills of exchange and negotiable instruments to B., who was in 1833 adjudicated a

(*s*) *Cleaver v. Newt of kin of M'Kenna*, 35 L. J., P. & M. 91.

(*t*) *Sharland v. Sharland*, 40 L. J., P. & M. 21.

(*u*) *In the goods of Risdon*, 1 L. R., Prob. 637.

(*x*) *In the goods of Eliz. Godfrey*, deceased, 2 Sw. & Tr. 133.

bankrupt; in 1862 C., being his official assignee, assigned ^{To whom granted.} the sums remaining due and to become due on the said bills of exchange and negotiable instruments to D., as purchaser under the Bankruptcy Act, 1861, sect. 137, and D. sold and assigned them to E.; the Court declined to make a grant of administration of the personal effects of A. limited to the aforesaid sums (the next of kin of A. having been cited and not appearing) to E.; but made the grant to D. as assignee of the official assignee (y).

Where A. died, leaving a will, whereof he appointed B. executor and residuary legatee, and B. proved the will, and afterwards became bankrupt, and subsequently died intestate, leaving part of the estate of A. unadministered: at the time of his bankruptcy, B. was a creditor of A.; the Court granted administration, with the will annexed, of the unadministered estate of A. to the assignee in bankruptcy of B. in the character of assignee of a residuary legatee (z).

A. died, leaving a will, whereof he appointed B. executor and residuary legatee; B. proved the will and afterwards became bankrupt, and subsequently died intestate, leaving part of the estate of A. unadministered; at the time of his bankruptcy B. was a creditor of A.: the Court granted administration, with the will annexed, of the unadministered estate of the effects of A. to the assignee in bankruptcy of B., in the character of assignee of a residuary legatee; *Semble*, that the assignee would also have been entitled to the grant as assignee in bankruptcy of a creditor of A. (a). ^{Assignee of residuary legatee.}

But if the assignee of a bankrupt deceased can obtain the debts due to the deceased without the grant of administration, the Court will not assist him, for where after the death of A., who died domiciled in France, intestate, his estate was, by a decree of a French Court, declared bankrupt, and B. was appointed syndic or assignee, and autho-

(y) *In goods of William Coles*, 3 Tr. 564.

Sw. & Tr. 181. (a) *Downward v. Dickenson*, 34

(z) *Chune, In goods of*, 3 Sw. & L. J., P. & M. 4.

To whom
granted.

rized to dispose of the debts due to the deceased: pursuant to this decree the debts, including one due from a person in England, were sold to C.: by the law of France, C. could sue in his own name for the debts, without obtaining letters of administration to A. without any other judicial act; the person entitled in distribution to the deceased's effects having been cited, and not appearing, application was made for a grant of administration to C. limited to the debt due in England: held, that as C. derived his title from the syndic, as a purchaser and not as representing the deceased, he was not entitled to have the grant (b).

To nominee of
creditors.

In a recent case the Court granted administration (the next of kin having renounced) of the personal estate and effects of an insolvent intestate, to a stranger nominated by the bulk of the creditors, in preference to a particular creditor, whose debt was small, but required the nominee to give justifying security, and to enter into a bond to pay the debts *pro ratâ* (c).

Creditor
guardian to
minors.

Where A. died intestate and insolvent, leaving three children minors, who had no known relations, and were the only persons entitled in distribution, the Court appointed a creditor guardian to the children, for the purpose of taking out administration to the estate of A. (d).

Creditor
limited.

The Court, there being no known relative of the deceased, under special circumstances made a grant to a creditor *ad colligenda bona*, limited to collect the personal estate of the deceased, to give receipts for his debts on payment of the same, and to renew the lease of his business premises, which would expire before a general grant could be made: the Court refused to include in the grant a power to dispose of the lease and goodwill of the business, or a power to carry on the business (e).

(b) *Dessit v. Delevicleuse*, 30 L. J., P. & M. 86.

(c) *Smithson, In goods of*, 36 L. J., P. & M. 77.

(d) *Peck, In goods of*, 27 L. J., P. & M. 106.

(e) *In the goods of Ch. Clarkington*, 2 Sw. & Tr. 381.

And where the widow and next of kin in this country renounced administration, and the estate, which was insolvent, was liable to depreciation, if the property (timber) was not at once sold: the Court, under the circumstances, made a grant *ad colligenda bona* to a creditor, the money realized by the sale of the timber (after deduction for wages and charges) and collection of debts, to be paid into the registry, and the next of kin abroad to be at once cited, with a view to the applicant taking a creditor's grant (*f*). To whom granted.

Administration was granted to the assignee of a deceased tradesman limited to the book debts specified in the deed of assignment (*g*).

Administration may be granted to one creditor of the deceased, though the proceedings for obtaining administration may have been initiated by another creditor: the latter being allowed such costs as were reasonably incurred by him, before the former took up the application (*h*).

The Court will not grant administration to a creditor without an affidavit of the date when the debt became due (*i*). Affidavit of date of debt.

It should also state that all persons entitled in distribution of the effects of the deceased had been cited (*k*).

It must also state the amount of the personal estate of the deceased (*l*).

Where administration is applied for by the creditor of a person who died intestate, without any known relation, a citation calling on the next of kin, if any, and all persons having interest in the estate of the deceased, should be issued, and an abstract of it advertised twice, with an interval of a fortnight, notice also being given to the Advertising citation.

(*f*) *Stewart, In goods of*, 38 L. J., P. & M. 39; 1 L. R., Prob. 727.

(*g*) *Dixon, In goods of*, 10 Jur., N. S. 854.

(*h*) *Andrews v. Murphy*, 30 L. J., P. & M. 37.

(*i*) *Rawlinson v. Burnell*, 3 Sw. & Tr. 479; 33 L. J., P. & M. 123.

(*k*) *Brown v. Wildman*, 28 L. J., P. & M. 54.

(*l*) *Briggs v. Roope*, 29 L. J., P. & M. 96.

To whom
granted.

Queen's proctor, after the lapse of thirty days from the last advertisement, if there is no appearance, and the Queen's proctor declines to interfere, administration will be granted to a creditor (*m*).

To party with-
out interest.

In case of an intestacy, where the persons who are sole next of kin, and the only persons entitled in distribution, renounce their title to administration the Court will make the grant to a person, who would have been next of kin if the sole next of kin had been out of the way, although such person has no interest (*n*).

So administration was granted to the nephew on the renunciation of his father, the brother and sole next of kin of the deceased (*o*).

Upon the consent of all the next of kin, the Court granted administration under the 73rd section of 20 & 21 Vict. c. 77, to a person having no interest in the property of the deceased (*p*).

But the Court refused to grant an administration of the effects of the deceased, under the 73rd section of the Probate Act, to a person not having any interest in the estate, merely because the next of kin had agreed to renounce in his favour (*q*).

In an administration suit in Chancery, it became necessary for the purposes of the suit that a personal representative of A., the wife of B., should be appointed; the Court, at the instance of C., who had no direct interest, allowed a citation to issue to B. to take administration of his wife's estate, or to show cause why it should not be granted to C. (*r*).

To attorney.

A. died domiciled in Brazil intestate, leaving a widow and several children (all minors), and some personal pro-

(*m*) *Brown (Mary Anne), In goods of*, 28 L. J., P. & M. 126.
See Rule 76, P. R. Non-C.

(*n*) *In the goods of Geo. Johnson*, 2 Sw. & Tr. 595.

(*o*) *In the goods of Mary Keane*, 1 Hag. Ecc. R. 692.

(*p*) *Farrell v. Brownbill*, 33 L. J., P. & M. 185.

(*q*) *Blake, In goods of*, 35 L. J., P. & M: 91.

(*r*) *Williams, In goods of*, 39 L. J., P. & M. 48.

perty in England; the Judge of Orphans, a functionary in Brazil charged with the administration of estates belonging to minors, having appointed B. guardian of the children of the deceased, who appointed C. the Brazilian Minister at Turin, his attorney in the matter, with power of substitution, issued letters of request to the judicial authorities in England to collect and deliver the same to C. or his representative; C. appointed D., resident in England, his substitute; authenticated copies of the proceedings before the Judge of Orphans, and of the power of attorney to C. and the original power of attorney, with affidavits of the facts of the case and of the law of Brazil having been filed, the Court granted administration to D. (*s*).

To whom
granted.
To attorney.

B., having acquired a domicile in British Guiana, died a bachelor and intestate: under an ordinance of that colony the administrator general took possession of B.'s property in that colony, and appointed Messrs. P., F. & P. of Liverpool to be his attornies, and in his name to obtain letters of administration to the personal estate of the deceased in this country: the Court directed notice to be given to the Queen's proctor, and for citations of the next of kin, if any, to be advertised: such notice was given, and the citations accordingly were advertised, and on the consent of the only party who appeared the administration was granted as prayed (*t*).

Although the attorney of the next of kin is resident without the jurisdiction of the Court, administration will be granted to him if the sureties to the bond are resident within the jurisdiction (*u*).

So, also, where the executors of a will being resident abroad, they appointed persons resident in Scotland as their attornies to take out administration with the will annexed;

(*s*) *In the goods of Louis* deceased, 2 Sw. & Tr. 604.

Bianchi, deceased, 1 Sw. & Tr. 511.

(*u*) *In goods of Joseph Leeson*, deceased, 1 Sw. & Tr. 463.

(*t*) *In the goods of John O'Brien*,

To whom
granted.

the attornies being unable to procure sureties to the bond resident in England, the Court accepted sureties resident in Scotland (*x*).

If the Court, on the document before it, is satisfied that the party entitled to a grant of administration desires the person applying to act as his attorney, it will not require a regularly-executed power of attorney (*y*).

Where the person solely entitled to a grant of administration was resident in this country and able to take it himself, the Court declined to decree it to his attorney for his use and benefit (*z*).

When the person entitled to administration is in England, a grant will not be made to his attorney unless the estate consists solely of property held in trust (*a*).

If two executors give a letter of attorney to a third person to take *administration cum testamento*, and one of the executors dies, the other has a right to call in the letters of attorney, and to take a probate of the will (*b*).

Under Court of Probate Act, 1857, s. 73, Rule 31, P. R. Non-C.] Where the executor or administrator was abroad, the inconveniences arising therefrom were remedied or relieved by the 38 Geo. 3, c. 87, but that statute did not apply to cases where probate or administration had never been taken out, and no representative ever constituted. The inconvenience from this state of things was very great, the property might be perishable or in a critical state, and irretrievable injury might be suffered before the party entitled to the grant could be communicated with. To remedy this the Court of Probate Act, c. 73, confers on the present Court a power of making a grant of administration to "such person as the Court shall think fit to be such

(*x*) *Ballingall, In goods of*, 32 L. J., P. & M. 138.

(*y*) *Morley, In goods of*, 3 Sw. & Tr. 425; 33 L. J., P. & M. 108.

(*z*) *In the goods of Eleanor*

Burch, deceased, 2 Sw. & Tr. 139.

(*a*) *Bullar, In goods of*, 39 L. J., P. & M. 26.

(*b*) *Pipon v. Wallis*, 1 Lee, 402.

administrator," although he may not be the person by law entitled.

To whom granted.
Court of Probate Act, 1857, s. 73.
In what cases.

This enactment applies to cases where it appears to the Court to be necessary or convenient "by reason of the insolvency of the estate of the deceased, or other special circumstances" to appoint such person, and it applies to cases where the deceased died wholly intestate as to personalty, or leaving a will of personalty, but there is no executor appointed, or no executor willing or competent, or where the executor is not resident in Great Britain or Ireland.

The grant, too, must be made to a person "other than the person who, if this act had not been passed, would by law have been entitled to the grant.

Therefore, since the next of kin of an intestate have *by law* the same title to administration as the widow has (although *the practice* is to make the grant to the widow), administration cannot be granted under this section to the next of kin, passing by the widow (*c*).

The terms of this section are perfectly general, and they give a most extensive power to the Court to make, under any special circumstances, the grant which, in the particular case, it may think fit. For where the deceased was assisted in the latter years of his life by A. B., his wife's nephew, his personal estate and effects (principally furniture) were valued at 838*l.*, the debts owing by him at the time of his death amounted to 972*l.*, and these were paid by A. B. out of his own money: the next of kin having renounced, the Court granted letters of administration of the personal estate and effects of the deceased to A. B., under the 73rd section (*d*).

Before applying under this section for a grant, parties, though having a mere legal interest, should be cited, and all deeds on which the application may be founded

All deeds must be brought into registry.

(*c*) *Corser, In goods of*, 31 L. J., P. & M. 170. (*d*) *Bateman, In goods of*, 40 L. J., P. & M. 24.

To whom
granted.
Court of Pro-
bate Act, 1857,
s. 73.

should be brought into the registry. For where, in 1817, land was demised to K. for 1,000 years, in trust for A.; in 1852 the equitable interest in the term having previously by various assignments become vested in Z., K. died in America, leaving a will, which was proved in America by L., his sole executor, but was not likely to be proved in this country: Z. sold his interest in the said term, but being unable to make a title for want of a personal representative to K., application was made under section 73, for a grant of letters of administration to Z., of the personal estate of K., limited to the remainder of the said term; but the deeds showing the deduction of the title to the terms, not having been brought into the registry, and the executor of K. not having been cited, the Court rejected the motion (*e*).

To father in
law of party
entitled.

Where A. B. died a widower and intestate, his only son and the sole person entitled in distribution was resident in Australia, a legal representative being required immediately, for the preservation of the property, administration for the use and benefit of the son, was granted to his father in law under the 73rd section (*f*).

The deceased left a will, in which she named certain persons, who died in her lifetime, executors, and her sister a married woman residuary legatee; by the marriage settlement of the sister, all property coming to the husband in right of his wife during coverture was to be at the absolute disposal of the wife, and the husband covenanted to execute all necessary documents to effect that object; the sister assigned the whole of her interest in the estate of the deceased, to her two sons in trust for herself absolutely; held that the Court might pass over the husband, he having no interest in the separate property of his wife, and without notice to him grant under 20 & 21

(*e*) *Keene, In goods of*, 28 L. J., ceased, 1 Sw. & Tr. 13; 27 L. J., P. & M. 34. P. & M. 17.

(*f*) *In goods of John Jones*, de-

Vict. c. 77, s. 73, to the nominees of the residuary legatee (his wife), administration with the will annexed of the goods of the deceased (*g*).

To whom granted.
Court of Probate Act, 1857, s. 73.

Where the executor of a will was bankrupt and resident in Australia, the Court granted letters of administration, with the will annexed, to one of the legatees, but required that before the letters issued, the written consent of the next of kin and the persons entitled to the undisposed-of residue, should be brought in and filed in the registry (*h*).

To legatees.

A. died intestate leaving an aged uncle and aunt, the only persons entitled in distribution; at their desire administration was granted for their use and benefit to their son on the sureties justifying (*i*).

A. died, a spinster and intestate, leaving her mother and one sister; the mother had married a second time, and her husband was in Australia; the Court without requiring the renunciation of the husband, upon the mother's consent, granted administration to the sister, under the 73rd section of 20 & 21 Vict. c. 77 (*k*).

Where A. died intestate, leaving B., a private soldier stationed in the East Indies, the sole person entitled to his personal estate; upon A.'s death, certain of his personal property was sold by auction, the proceeds of the sale remaining in the hands of the auctioneers; B. wrote to C. stating that he should not return to England for three years, and directing C. to take the necessary steps for lodging the proceeds of the sale in the Bank of England, with the exception of 10*l.* which he wished to be transmitted to him: the Court, under the 73rd section of the Probate Act, granted administration to C. for the benefit of B., limited to receiving the proceeds of the sale and

(*g*) *Pine*, In goods of, 36 L. J., P. & M. 95.

(*i*) *In goods of Hannah Roberts*, deceased, 1 Sw. & Tr. 64.

(*h*) *Cooper*, In goods of, 39 L. J., P. & M. 8.

(*k*) *Llanwarne*, In goods of, 36 L. J., P. & M. 25.

To whom
granted.

Court of Pro-
bate Act, 1857,
s. 73.

To creditor.

paying it, with the exception of the 10*l.*, into the Bank of England (*l*).

Where a person being the sole party interested in, and the sole party entitled to represent the estate of a deceased person, died without having taken out a grant to such person, and his personal representative had filed a renunciation, and a consent to the grant being made to a creditor of the party so originally interested and entitled to the grant, the Court made the grant to such creditor under the 73rd section of the Probate Act, 1857 (*m*).

Affidavit in
support.

Administration will not be granted under the 73rd section to a person not by law entitled to the grant, when the person who is entitled to it is resident abroad and has not received notice of the application, unless the Court is satisfied that it is necessary and convenient that the grant should be made: a general statement upon affidavit that "it is necessary for the preservation of the personal estate and effects of the deceased that administration should be granted," will not satisfy the Court, in the absence of such notice (*n*).

The Court will not make a grant of administration under the 73rd section to a party entitled to a grant in a superior character (*o*).

May not
change nature
of grant.

The Court has no power, under this section, to grant general administration to a person who before the act would only be entitled to a grant of administration during the minority of an infant, the section not conferring power to substitute one kind of administration for another, but merely to substitute another person as administrator in the place of the person, who would by law be entitled to administer (*p*).

(*l*) *Drinkwater, In goods of*, 31
L. J., P. & M. 93.

(*m*) *In the goods of Fraser*, 1 L.
R., Prob. 391; 36 L. J., P. & M. 63.

(*n*) *In goods of Harriett Cooke*,
deceased, 1 Sw. & Tr. 267; and 28

L. J., P. & M. 43.

(*o*) *In the goods of Thomas*
Fuirmeather, 2 Sw. & Tr. 588.

(*p*) *Smith, In goods of*, 27 L. J.,
P. & M. 105.

Where the persons entitled to administration were resident in one of the Southern States of America, and communication between that State and England was cut off by reason of the civil war between the Southern and Northern States, and the estate was not perishable, but consisted chiefly of money in the funds and in a savings bank, the Court refused to grant administration under section 73 of the 20 & 21 Vict. c. 77, to a nephew of the deceased, for the use and benefit of the persons entitled (*q*).

Court of Probate Act, 1857, s. 73.

In what cases granted.

Where A. died intestate, leaving her only sister solely entitled in distribution a lunatic, and without a committee of her estate or person; administration for the use and benefit of the sister during her lunacy was granted to the stepmother, who was co-executrix and co-trustee with deceased, of the father's will, and beneficially interested under it (*r*).

Where the estate of an intestate is perishable, and the next of kin were in Australia, the Court under section 73 of 20 & 21 Vict. c. 77, granted administration for the use and benefit of the next of kin (*s*).

Perishable.

The deceased was possessed of a freehold estate, which he occupied and farmed himself; at his death his only next of kin was in New Zealand; the Court, under the 73rd section of the Probate Act, granted administration of the personal estate of the deceased to his sister, for the use and benefit of such next of kin, and limited until the next of kin should apply for and obtain administration of the goods of deceased (*t*).

Properly perishable.

A. died intestate, leaving four children, of whom one was of age but was abroad, and other three were minors: an immediate grant of administration being necessary, the Court, under the 73rd section of the 20 & 21 Vict. c. 77, granted administration to the duly-elected guardian of the

Special circumstances. One abroad, others minors.

(*q*) *White*, In goods of, 31 L. J., P. & M. 161.

(*s*) *Young*, In goods of, 36 L. J., P. & M. 80.

(*r*) *In the goods of Mary Burrell*, deceased, 1 Sw. & Tr. 64.

(*t*) *In the goods of Cholwill*, 35 L. J., P. & M. 75.

Court of Probate Act, 1857, s. 73.

In what cases granted.

Other circumstances.

Pauper lunatic.

minors, for their use and benefit, limited until one of the children should apply for a grant (*u*).

A., entitled to administration of the effects of B., was a pauper lunatic, and as such was confined in a county lunatic asylum and no committee of her person or effects had been appointed; A.'s next of kin having been cited and not having appeared, the Court under 20 & 21 Vict. c. 77, s. 73, granted administration of the effects of B. to the guardians of the poor, at whose expense A. was maintained, for A.'s use and benefit, limited to the period of her lunacy (*x*).

But where an intestate, whose property was under 1,000*l.* in value, left no known relation except a sister who was of unsound mind, but had not been so found by inquisition and who had no property of her own; the Court refused to grant administration under the 73rd section of the 20 & 21 Vict. c. 77, for the use and benefit of the lunatic, to a stranger in blood, until the applicant should obtain an order from the Court of Chancery under the 12th section of the Lunacy Regulation Act, 1862 (25 & 26 Vict. c. 86), rendering the property of the lunatic available for her maintenance and benefit (*y*).

Other circumstances.

Where A., a foreigner, died on his voyage to England, and at the time of his death he had in his possession (*inter alia*) bills of exchange drawn upon merchants in England, and there was also a debt owing to him by a person in England; no testamentary paper was found in the deceased's possession, and he had no relative or agent in England; his relatives were resident in one of the Southern States of North America, but in consequence of the war between those States and the Northern States and the blockade of the southern ports, communication with them was difficult and uncertain; the Court, under the 73rd section of 20 & 21 Vict. c. 77, granted administration

(*u*) *Burgess, In goods of*, 32 L. J., P. & M. 21.
J., P. & M. 158.

(*y*) *Slumbers, In goods of*, 34 L.

(*x*) *Southwell v. Findlay*, 33 J., P. & M. 93.

limited *ad colligendum* to a part owner of the ship on board which A. died, and who had taken charge of his effects.

Court of Probate Act, 1857, s. 73.

In what cases granted.

Semble, that where a foreigner dies under such circumstances the crown is entitled to the custody of his effects (*z*).

Sometimes where powers of attorney are insufficient in terms, to enable the attorney to take out administration in the place of his appointor, the Court will assist the parties under this section. As where A. in April, 1856, executed a power of attorney, appointing L. her attorney for the purpose of managing her real and personal estate, and giving him very extensive powers, but not in terms sufficient to constitute him her attorney for the purpose of taking out letters of administration; and A. then went abroad, and during her absence a sum of money having become payable to the personal estate of B. who had died intestate, and in respect of whose estate A. was entitled to administration, it became necessary that an administrator should be appointed, in order that a discharge for that sum might be given; it being uncertain when A. would return to this country, or where she was, the Court granted administration of the estate of B. to L. under section 73 (*a*).

So, where the presumption of A.'s death arose from the fact that he had not been heard of for seven years, and there was no evidence that he was ever married or had left a will, and his father died before the expiration of the seven years, the Court, on account of the impossibility of ascertaining whether or not A. had survived his father, under section 73 of the 20 & 21 Vict. c. 77, granted administration to the next of kin of A., without requiring administration to be taken out to his father (*b*).

Similarly, where in August, 1858, A. died a bachelor and intestate; in July, 1861, the presumption arose that A.'s

(*z*) *Wyckoff*, In goods of, 32 L. P. & M. 17.
J., P. & M. 214.

(*b*) *Astell*, In goods of, 31 L. J.,

(*a*) *Escot*, In goods of, 28 L. J., P. & M. 38.

Court of Probate Act, 1857, s. 73.

In what cases granted.

father who had not been heard of for more than seven years was dead, but there was no evidence as to the date of his death, the Court, under the 73rd section of 20 & 21 Vict. c. 77, granted administration of the effects of A. to his mother, without requiring that administration to his father should be taken out (*c*).

D. H., executor and universal legatee of J. H., died, having proved the will, intestate: administration of her effects was granted to her three children one of whom had since died, and the other, E. L., was in Australia; a representation to J. H. was required for the purpose of surrendering a term of a certain property of which he had been a trustee; the Court, on E. L. being cited by advertisement and not appearing, granted administration to F. H., her co-administrator, of the effects of J. H., with his will annexed (*d*).

Foreign grant.

Where the deceased died domiciled in New South Wales, in which country probate of his will was granted to A. as executor according to its tenor; according to the practice of this court, the words of the will did not constitute an executorship, but in order to follow the colonial grant as near as possible, the Court directed that administration should issue to A. under 20 & 21 Vict. c. 77, s. 73, as the person entitled by the grant from the proper court in New South Wales, to administer the effects of the deceased (*e*).

Renunciation of Administration.] A., resident abroad, being entitled to administration, executed a power of attorney, expressly authorizing B. to execute on his behalf a renunciation and consent; the Court acted on a renunciation and consent executed by B. under such power (*f*).

Effect of.

When next of kin have renounced, they have no right to be heard as to which of the creditors is entitled to administration (*g*).

(*c*) *Smith, In goods of*, 31 L. J., P. & M. 127.

P. & M. 182.

(*f*) *Rosser, In goods of*, 33 L.

(*d*) *Hancock v. Lightfoot*, 3 Sw. J., P. & M. 155.

& Tr. 557; 33 L. J., P. & M. 174.

(*g*) *Smithson, In goods of*, 36 L.

(*e*) *Earl, In goods of*, 36 L. J., J., P. & M. 77.

When to be granted.] By Rule 44, P. R., Non-C., no letters of administration are allowed to issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of the Judge or the order of two of the Registrars. Not before fourteen days.

If three years have elapsed from the death of the deceased the reason of the delay is to be certified to the Registrars. This certificate is really nothing more than a written explanation of the reasons why the applicant did not come for the grant before. If this certificate is unsatisfactory the Registrars (if in the principal registry) are to require such proof of the alleged cause of delay as they may see fit (*h*), or the district Registrar (if in the country) is to require an affidavit or to communicate with the Registrars of the principal registry (*i*). Or after three years, without explanation. Certificate, not on oath.

How granted.] The rules which relate to the granting of letters of administration consist of those from the 28th to the 42nd, P. R., Non-C., and the 33rd to the 49th, D. R., all inclusive.

As in obtaining probate, a reference to the form of the letters, will inform the applicant of the steps (except the bond) necessary practically to obtain administration. The practice with regard to probate *mutatis mutandis* is applicable to the obtaining letters of administration. There are some distinctions however;—while each executor is entitled severally to probate, if one or some of several persons, all of whom are equally entitled to administration, apply alone, the Registrars may require proof of notice to the others (*k*).

The oath of the administrator (which is subscribed and sworn as an affidavit, see Rule 47, P. R.; Non-C., and Rule 57, D. R.), and the affidavit for the Inland Revenue must be filled up and sworn. Forms may be obtained from any law stationers.

As to the manner of drawing and swearing affidavits,

(*h*) Rule 45, P. R., Non-C.

(*k*) Rule 28, P. R., Non-C.; Rule

(*i*) Rule 53, D. R.

34, D. R.

How granted. see Rules, P. R., Non-C.; 51 to 58, and D. R. 64 to 71, inclusive; as to before whom they may be sworn (taking care it is not *your own proctor*, &c., Rules, P. R., Non-C. 55 and 56, and D. R. 68 and 69), see Court of Probate Act, 1857, sects. 27 and 45, and Court of Probate Act, 1858, sects. 31 and 32; 6 Geo. 4, c. 87, s. 20, and 18 & 19 Vict. c. 42, ss. 1 and 3, and see *infra*, tit. "Affidavits."

The bond, see *infra*, p. 197, must also be executed as directed by the Rules, P. R., Non-C. 38 to 42, and D. R. 44 to 49. The sureties who join in the bond may be rejected by the Registrars, unless they are satisfied of their responsibility, see Rules, P. R., Non-C. 41, and D. R. 48; in one case they may be required to justify, Rule, P. R., Non-C. 42, and D. R. 49.

Practical directions.

Having got your affidavits ready and bond executed, take them with a blank form of administration, which may be obtained from any law stationer, or in the country from a distributor of stamps, to the clerk of the seal. For the fees payable, see infra, tit. "Fees." Call in a day or two as directed, and the letters of administration will be delivered out to you. In the country the District Registrar unites in himself the various functions, clerk of the seal, Registrar, &c. &c.

Where will in existence, but testator insane.

Where by the will of J., who was at the time he made it of unsound mind, his personalty was bequeathed to a charitable purpose in such terms as would give the Queen the disposition of it under her sign manual; the Queen's proctor, having been cited to propound the will or show cause why administration should not be granted to the next of kin, as in case of an intestacy, did not appear, a copy of the original will, which had been lost, having been brought into the registry: it was held that administration might go (*l*).

Description of deceased.

In a grant of administration of the effects of a divorced woman the name by which the deceased should be de-

scribed in the grant is that by which she was known at the time of her death (*m*).

BONDS UNDER OLD PRACTICE.

Previous to the institution of the Probate Court certain statutes were passed for securing the due administration of the estates of intestates.

By 21 Hen. 8, c. 5, s. 3, the ordinary was required to take surety from administrators. 21 Hen. 8,
c. 5, s. 3.

By 22 & 23 Car. 2, c. 10, s. 1, made perpetual by 1 Jac. 2, c. 17, s. 5, it was provided that all ordinaries, as well as the judges of the Prerogative Courts of Canterbury and York for the time being, as all other ordinaries and ecclesiastical judges, should, upon their granting and committing of administrations of the goods of persons dying intestate, take sufficient bonds with two or more able sureties, respect being had to the value of the estate, in the name of the ordinary, with the conditions following:— 22 & 23 Car. 2,
c. 10, s. 1.
1 Jac. 2, c. 17,
s. 5.

To make a true and perfect inventory of all the goods, chattels and credits of the deceased, and exhibit the same in the registry of the proper Court on or before a certain day. Conditions of
bond.
Inventory.

To well and truly administer the said goods, &c. according to law. To administer.

To make a true account of the said administration on or before a certain day. To account.

To deliver and pay the residue unto such person or persons as the judge should appoint. To pay residue.

And if it should afterwards appear that any will was made by the deceased, to exhibit the same into the said Court. To exhibit
will, if any.

Under the old practice the bond was taken in the name of the ordinary, and, if it had become forfeited, the parties desirous of putting the bond in force made application to the Ecclesiastical Court, praying that the bond "might be attended with." This was preliminary to putting the bond

(*m*) *Hay, In goods of*, 35 L. J., P. & M. 3.

Former practice.

in suit in a Court of law or equity (*n*), and it was necessary in such case that the administrator and all the sureties should be cited. The Ecclesiastical Court did not decide finally whether any breach of condition had taken place, but left such matter to be decided by the court wherein the bond was sued upon. Where, however, the party applying to the Court had clearly no right to sue upon the bond, the Court would refuse the application (*o*). The action or suit was then brought in the name of the ordinary, or, in case of his decease, in the name of his personal representatives. These proceedings, however, having been found in many respects inconvenient, and the present court having been constituted the sole court in place of all the extinct jurisdictions, it is enacted by 20 & 21 Vict. c. 77, s. 80, that “so much of an act, 21 Hen. 8, c. 5, and of an act, 22 & 23 Car. 2, c. 10, and of an act, 1 Jac. 2, c. 17, as requires any surety, bond, or other security to be taken from a person to whom administration shall be committed, shall be repealed.”

Court of Probate Act, 1857, s. 80.

C. P. A. 1858 (21 & 22 Vict. c. 95), s. 15.

New practice as to old bonds.

By 21 & 22 Vict. c. 95, s. 15, it is enacted that “bonds given to any archbishop, bishop, or other person exercising testamentary jurisdiction in respect of grants of letters of administration, made prior to January 11, 1858, or in respect of grants made in pursuance of the Court of Probate Act or of this act, whether taken under a commission or requisition executed before or after the said 11th of January, shall enure to the benefit of the Judge of the Court of Probate, and, if necessary, shall be put in force in the same manner, and subject to the same rules, so far as the same may be applicable to them, as if they had been given to the judge of the said Court subsequently to that day.”

The Court of Probate has no jurisdiction to compel an administrator, who obtained his grant of administration

(*n*) *Younge v. Skelton*, 3 Hagg. Ecc. R. 780.

(*o*) *Drewe v. Long*, 18 Jur. 1062.

from an ecclesiastical court before 11th January, 1858, to file an inventory of the goods of the deceased in the registry of the Court of Probate. By Court of Probate Act, 1857, s. 87, such inventories are returnable only into the Court of Chancery. The course to be adopted in such a case is to move the Court *ex parte* for a rule, calling upon the principal and sureties to show cause why the bond should not be assigned for breach of the condition without further proceedings. The Court may then, upon being satisfied that an inventory has not been returned into the Court of Chancery, order the registrar to assign the bond (*p*). New practice
as to old bonds.

The enactments contained in sect. 15 of 21 & 22 Vict. c. 95 are not retrospective, so as to enable the assignee of a bond, given to the ordinary before the passing of the C. P. A. 1857, to maintain an action commenced by him before the passing of the C. P. A. 1858 (*q*).

Where, in 1854, an administration bond with two sureties was given to the Bishop of Chester, in 1854 a suit in chancery was commenced by a creditor of the intestate against his administratrix, and the condition of the bond having been broken, it was ordered by the Master of the Rolls that an action should be brought on it against the sureties: the proceeding required by the Ecclesiastical Court to be taken before commencing such action were not completed at the time the Probate Act came into operation, when the testamentary jurisdiction of the Court of Chester ceased: on motion that the Court should order the bond to be attended with, for the purpose of being put in suit, the Court decreed that the Registrar should order the bond to be assigned for the purpose of being put in suit; *quære* whether, since 20 & 21 Vict. c. 77, an action will lie on such bond (*r*).

By the 20 & 21 Vict. c. 77, s. 81, "every person to

(*p*) *Bouverie and Lefevre v. Maxwell*, 36 L. J., P. & M. 3; 1 Law Rep., P. & D. 272. (*q*) *Young v. Hughes*, 4 H. & N. 76. (*r*) *Young v. Owley*, 27 L. J., P. & M. 30.

Condition. whom any grant of administration shall be committed shall give bond to the Judge of the Court of Probate, to enure for the benefit of the judge for the time being, and if the Court of Probate, or (in the case of a grant from the district registry) the district Registrar shall require, with one or more surety or sureties conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time, by any general or special order, direct: provided that it shall not be necessary for the solicitor for the affairs of the treasury, or the solicitor of the Duchy of Lancaster, applying for or obtaining administration to the use or benefit of her Majesty, to give any such bond as aforesaid."

Penalty. By the 82nd section, "such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the court or district Registrar, as the case may be, shall in any case think fit to direct the same to be reduced; in which case it shall be lawful for the Court or district Registrar so to do; and the Court or district Registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court or district Registrar shall think reasonable."

See also Rules 38, 39, 40, 41, 42, P. R., Non-C. and Rules 44, 45, 46, 47, 48 and 49, D. R., as to the practice as to administration bonds and sureties.

Execution of. An administration bond was returned from Australia, executed in the presence of two witnesses and not in the presence of the commissioner who took the affidavit of the administratrix: the Court allowed the bond to be filed notwithstanding the 38th rule, P. R., Non-C. (s).

Bond cannot be dispensed with. The Court has no power under any circumstances to dispense with an administration bond (t).

(s) *Parker, In goods of*, 36 L. J.,
P. & M. 26

(t) *Powis, In goods of*, 34 L. J.,
P. & M. 55.

It was held under this section (82), where the effects of an intestate had been sworn under 20,000*l.*, and letters of administration were granted to A., on the execution of the usual administration bond, in a penalty double that sum, and subsequently, by payment to the administratrix of a dividend upon the estate of a bankrupt debtor of the intestate, the value of the effects being increased beyond 20,000*l.*, and it became necessary to re-swear them as under 25,000*l.*, that a fresh bond need not be executed, but that a bond in the penalty of 10,000*l.* would, with that already executed, be sufficient (*u*).

C. P. A. 1857,
s. 82.
More than one
bond.

Where G. died a bachelor and intestate, leaving personal estate sworn under 2,000*l.*, his debts amounting to about 44*l.*, the Court, under section 82, granted letters of administration to his mother, who was his sole next of kin, on her giving a bond with sureties for double the amount of the debts of the deceased (*x*).

Where letters of administration were granted merely to enable a personal representative of the deceased to execute a formal release to the trustee under a marriage settlement, the Court allowed the property to be sworn under 20*l.* (*y*).

Nominal
penalty.

Where a testator died leaving personal estate in England and personal property in Ireland, and an administration was granted in the Court of Probate in England of the property in England, sworn under 2,000*l.*, with a bond to cover such property, the Court subsequently ordered that on a bond being given in the penal sum of 120,000*l.*, and its being noted on the letters of administration, that the deceased's personal estate in Ireland had since been sworn under 60,000*l.* and the security given accordingly, one of the registrars should issue a certificate that a bond had been given to the judge of the Court of Probate to cover the property in Ireland as well as in England (*z*).

Property in
Ireland.

(*u*) *Wire, In goods of*, 28 L. J., Sw. & Tr. 316; 30 L. J., P. & M. P. & M. 111. 191.

(*x*) *M. Gent, In goods of*, 27 L. (*z*) *Potts, In goods of*, 2 Sw. & J., P. & M. 37. Tr. 5.

(*y*) *Stackpoole, In goods of*, 2

Sureties.] See Rules 42, P. R., Non-C. and 49, D. R. Where a lunatic without a committee of estate or person was next of kin and solely entitled in distribution, and administration was granted, under the 73rd section, to her stepmother, sureties were required to justify (a).

Where the deceased's only son and the sole person entitled in distribution was resident in Australia, administration was granted under the 73rd section to his father-in-law on his giving justifying security and being assigned to exhibit an inventory of the goods, chattels, and credits, within one month from the date of the letters of administration (b).

Amount.

Where a grant was made to persons representing three-fourths of the interest, their sureties were ordered to justify to the extent of the other fourth (c).

Where justifying security had been ordered, and it appeared, that though the estate had been sworn under 2,000*l.*, its actual value was only 800*l.*; the Court allowed the sureties to justify for double the amount of the actual value, instead of double the amount under which the estate was sworn (d).

Where the beneficial residuary legatees were minors, and the value of the residue was about 8,000*l.*, subject to a mortgage of 3,900*l.*, the Court granted administration, with the will annexed *de bonis non*, to a contingent legatee, and reduced the amount for which the sureties would have had to justify to 1,000*l.* each, it appearing that justifying security to a greater amount could not be given, that the grant was for the interest of the minors and that their guardians did not oppose (e).

Where A. died intestate, leaving personalty sworn under the value of 6,000*l.*, A.'s father, who was his only next of kin and the only person entitled in distribution, being

(a) *In goods of Mary Burrell*, deceased, 1 Sw. & Tr. 64. north, 1 Sw. & Tr. 305.

(b) *In goods of John Jones*, deceased, 1 Sw. & Tr. 13. (d) *England v. Wall*, 31 L. J., P. M. & A. 16.

(c) *Iredale v. Ford and Bram-* (e) *Fraser, In goods of*, 33 L. J., P. & M. 57.

unable to procure sureties to a bond in a penalty for double the amount of the estate, the court accepted two sureties in the sum of 1,000*l.* each (*f*). Sureties.
Amount.

A. died intestate, leaving B. his only next of kin, and solely entitled in distribution: his personal estate was of the value of about 55*l.*, and it seemed that he had no debts: B. being unable through poverty to obtain sureties to the amount of 200*l.*, the penalty of the requisite bond, the Court under s. 82 of 20 & 21 Vict. c. 77, reduced the penalty to 60*l.* (*g*).

Creditors are entitled to a *constat* of the personal estate, but they have no right to the quantum of security (having no interest in the administration bond), or to require the sureties to justify (*h*). Who may demand sureties to justify.

Even where the parties beneficially entitled desire a grant to their nominee under the 73rd section, the sureties must justify (*i*).

On renunciation of a co-executor, the Court will not grant administration with the will annexed, without justifying securities, to the daughter, the residuary legatee, during the lunacy of the mother, the other co-executor (*k*).

Where the unadministered estate of a testator had been transferred to the Accountant-General of the Court of Chancery and a bill had been filed praying for it to be administered by the Court, the Court decreed a grant *de bonis non* to the residuary legatee for life, without requiring her to find sureties to the administration bond (*l*). Sureties dispensed with.

The Court made an order to dispense with the usual sureties to an administration bond, to be entered into by A. B., who was beneficially entitled to a fund which had been paid into the Court of Chancery and for which the

(*f*) *McDonald, In goods of*, 32 *Roberts, deceased*, 1 Sw. & Tr. 64.
L. J., P. & M. 132. (*h*) *Re Hardstone*, 1 Hag. Ecc.

(*g*) *Harrigan, In goods of*, 32 L. R. 487.
J., P. & M. 204. (*l*) *Cleverly and another v. Glad-*

(*h*) *Hughes v. Cook & others*, 1 *dish*, 2 Sw. & Tr. 335; 31 L. J., P.
Lee, 386. & M. 53.

(*i*) *In the goods of Hannah*

Sureties. administration was required, it appearing that A. B. was, in consequence of sickness, in great poverty, and unable to induce any of his relatives or friends to become sureties to the bond (*m*).

Not dispensed with. The mere fact that a receiver of the personal estate of an intestate has been appointed by the Court of Chancery, is no ground for dispensing with justifying security on a grant of administration. If the receiver is appointed for a temporary purpose only and it is not clear that the Court of Chancery will retain its control of the estate, after the grant has been made, justifying security will be required (*n*).

Must be in England. Where administration is granted to a person out of England, it is required that the sureties to the bond shall be resident within the kingdom (*o*).

Resident in Scotland. The Court will not allow residents in Scotland to be sureties to an administration bond (*p*).

Where the person applying for administration was solely entitled to the personal estate of the deceased, and there were no creditors, the Court allowed the sureties to the administration bond to be persons resident in Scotland (*q*).

Substitution of. The Court will not discharge the original sureties to an administration bond, and allow other sureties to be substituted for them (*r*).

An administration bond was attested by two witnesses, but not by the person who administered the oath to the administratrix, as required by Rule 38, P. R., Non-C., the estate being small, and the administratrix resident in New South Wales, the Court dispensed with the rule and made the grant (*s*).

(*m*) *Louise Maria de la Farque*, P. & M. 142; (*Ballingall*, *In goods of*, overruled).
In goods of, 2 Sw. & Tr. 631; 31 L. J., P. & M. 199.

(*q*) *Houston*, *In goods of*, 35 L. J., P. & M. 41.

(*r*) *In the goods of Stack*, 1 L.

(*o*) *Re O'Byrne*, 1 Hag. Ecc. R., Pro. 76; 35 L. J., P. & M. 42.

R. 316. (*s*) *In the goods of Parker*, 1 L.

(*p*) *Herbert v. Shiell*, 33 L. J., R., Pro. 301.

The Court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the Registrars of the Court to assign the same to some person to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond (t).

Assignment of bond.

On a *primâ facie* case of a breach of an administration bond being established, notice in some form having been given to the sureties, the Court will direct the bond to be assigned; but might refuse to do so, if on cause shown the proceeding appeared to be wholly frivolous and vexatious (u).

And where a person interested under the estate of a deceased intestate, to whom administration has been taken out, makes out a *primâ facie* case of breach of the administration bond, the Court will direct a rule nisi, calling on the sureties to show cause why the bond should not be assigned (v).

Rule nisi.

The Court will order an administration bond to be assigned upon being satisfied that the application for the order is made *bonâ fide*, and upon a *primâ facie* case being made out by the applicant, that the condition of the bond has been broken, and that he was entitled to sue the administrator for the breach. Where the alleged breach of the condition of any administration bond was that the administrator had not paid any part of the personal estate of the intestate to one of the next of kin, and the only

Assigned on condition.

(t) Court of Probate Act, 1857, P. & M. 25.
s. 83.

(v) *In goods of Wm. Jones*, 3 Sw. & Tr. 28; 32 L. J., P. & M. 26.
(u) *Brooks and Marshman v. Brooks*, 3 Sw. & Tr. 32; 32 L. J.,

Assignment
of bond.

question in dispute was whether the applicant was one of the next of kin, the Court directed the bond to be assigned to him, upon condition that he would consent to an order that no execution should issue at common law, but that the money, if any, recovered by the judgment should be paid into the registry: leave to appeal refused (*x*).

Two bonds.

An administrator swore the estate under twenty pounds and gave the usual bond with A. for surety, subsequently he re-swore the estate under six hundred pounds and gave a fresh bond with two other sureties: He then became bankrupt without having duly administered: The Court ordered the second bond to be assigned, but refused to order the assignment of the first until after the action on the second bond should be decided, it appearing that the estate had been duly administered to the amount for which the surety to the first bond was liable (*y*).

Delivered out
to be can-
celled.

Where, under a misapprehension as to the value of the personal estate of an intestate, the penalty of an administration bond was too large, the Court, upon the execution of a fresh bond in a penalty proportioned to the actual value of the estate, ordered the original bond to be delivered out of the registry in order that it might be cancelled (*z*).

POWERS AND DUTIES OF PERSONAL REPRESENTATIVE.

The power of an administrator commences upon the grant of the letters of administration (*a*).

It should be always borne in mind that an administrator derives his authority from the Court, while an executor derives his authority from the will: and he is in possession, in point of law, from the time of the death, though before probate is granted (*b*).

Consequently, an executor may commence his duties

(*x*) *In the goods of Young*, 1 L. R., Prob. 186. P. & M. 105.

(*a*) *Wankford v. Wankford*, 1

(*y*) *Irving, In goods of*, 38 L. J., Salk. 299.

P. & M. 83; 1 L. R., Prob. 558.

(*b*) *Smith v. Milles*, 1 T. R. 480.

(*z*) *Gould, In goods of*, 34 L. J.,

upon the death of the testator, but an administrator has no authority to act until he has obtained letters of administration.

The distribution of an intestate's estate before administration granted is not an act for the benefit of the estate. A person, therefore, who subsequently takes out administration will be entitled to recover the property, although it was distributed with his assent (*c*).

The first duty of an executor or administrator is to bury the deceased in a manner suitable to the estate, and the law will imply a promise on his part to pay a person, who, upon the neglect of the executor, has performed this duty. As to what is *suitable to the estate* of a deceased, the rule appears to be that the executor is entitled to be allowed reasonable expenses, according to the testator's condition in life; and if he exceeds those, he is to take the chance of the estate turning out insolvent; no precise sum can be fixed to govern executors in all cases; it must obviously vary in every instance, not only with the station in life of each particular testator, but also with the price of the requisite articles at the particular place (*d*).

The expense of taking out probate or administration comes next in order (*e*).

Both executors and administrators may be compelled by any party having an interest to exhibit an inventory of the personal estate and effects of the deceased, but the modern practice is not to deliver any inventory, unless it be called for: the Court has power *ex officio* to compel an inventory: this is done frequently in the case of minors (*f*).

A Court of Probate can only require that all the deceased died possessed of should be included in the inven-

(*c*) *Morgan v. Thomas*, 8 Ex. 302; 17 Jur. 283; 22 L. J., Ex. 152.

(*d*) *Edwards v. Edwards*, 2 Cr. & M. 612; *Reeves v. Ward*, 2 Scott, 395.

(*e*) *Tugwell v. Hayman*, 3 Camp. 298.

(*f*) *Roberts v. Roberts*, 2 Lee, 399; *Phillips v. Bignell*, 3 Phill. 239.

Inventory— tory; it cannot call for an account of the subsequent profits on his business (*g*).

who may demand. An inventory and account may be demanded of an executor by a residuary legatee who has given a release, as a release is no bar to such a claim (*h*).

Where an administration has been granted to a guardian *pendente minore ætate* of a widow, and the widow on coming of age renounces in favour of a creditor, the creditor has a right to call on the original administrator for an inventory and account (*i*).

To collect estate. An executor or administrator should next collect the goods of the deceased. In this duty he should exercise due diligence; for, if by unduly delaying to bring an action, the executor or administrator has enabled a debtor of the deceased to avail himself of the Statute of Limitations, the executor or administrator will be personally liable (*j*).

He has power, unless expressly forbidden, to make reasonable and proper investments of the funds collected (*k*).

To pay debts. He should next pay the debts of the deceased in order.

Order of debts. The crown has the first claim on the estate if the debt be of record (*l*).

There are certain debts which take precedence under special acts of parliament.

Money due from overseers of the poor (*m*).

From executors of persons intrusted with monies, &c. of friendly societies (*n*).

And from executors of officers of savings banks (*o*).

The debts of officers and soldiers in actual service take precedence of all debts whatsoever (*p*).

(*g*) *Pitt* (assignee of *Woodham*)
v. *Woodham*, 1 Hag. Ecc. R. 250.

(*h*) *Kenny* v. *Kenny*, 1 Hag.
Ecc. R. 105.

(*i*) *Taylor* v. *Newton*, 1 Lec, 15.

(*j*) *Hayward* v. *Kinsey*, 12 M.
& R. 573.

(*k*) 22 & 23 Vict. c. 35, s. 32.

(*l*) *Magna Charta*, c. 18; 2 Inst.
32; Com. Dig. Admon. (c. 2).

(*m*) 17 Geo. 2, c. 38.

(*n*) 18 & 19 Vict. c. 63, s. 23.

(*o*) 3 & 4 Will. 4, c. 14, s. 28.

(*p*) 58 Geo. 3, c. 73, s. 1.

Where the death has taken place before the 1st January, 1870, judgment debts of courts of record and decrees in chancery come next; and such debts are preferred to recognizances and statutes, which latter should next be paid (q). Where death before 1st January, 1870.

Debts by special contract take rank next in succession, for instance, rent, bond, &c.

An executor is bound to pay a debt on specialty before a debt by simple contract, although the bond is not yet due.

Last in order come debts on simple contract.

If a debt of this nature be due to the crown, it takes precedence of other debts of the same nature which are owing to subjects.

But now all specialty and simple contract debts of deceased persons stand in equal degree, if the deceased die on or after the 1st of January, 1870 (r). Death since 1869.

One of the privileges of an executor or administrator is that he may retain a debt due from him to the deceased in preference to all creditors of equal degree. Retainer.

When the debts are all discharged, the legacies should be paid. The residue, after payment of legacies, should be distributed among the parties entitled. Payment of legacies.

Where the administrator is *cum testamento annexo*, the office of administrator is almost identical in its duties with that of executor, so far as the will extends.

The principal duty which a simple administrator has to perform, as distinguished from an executor, is to distribute the intestate's estate; but an executor may in some cases be called upon to distribute the portion of the estate that is undisposed of by the will. Formerly, if there were no residuary legatee, the executor took the residue of the personal estate, after paying debts and legacies, but now it has been enacted by 11 Geo. 4 & 1 Will. 4, c. 40 (s), that when any person shall die, having by will or codicil Distribution of estate.
Residue undisposed of.

(q) See 1 & 2 Vict. c. 118, s. 18.

(s) Sect. 1.

(r) 32 & 33 Vict. c. 46, s. 1.

Distribution of estate.

appointed any executor, such executor shall be deemed by Courts of equity to be trustee for the person or persons (if any) who would be entitled to the estate under the Statute of Distributions, in respect of any residue not directly disposed of, unless it shall appear by the will or codicil thereto that the person so appointed executor was intended to take such residue. This intention that the executors should take beneficially, must appear on the face of the will, and parol evidence is not admissible to show it (*t*).

Where, however, there is no person entitled to distribution, an executor may take for himself for his own use and benefit the intestate portion of the estate (*u*).

In this respect the office of executor differs from that of administrator, because the latter takes no benefit whatever from the estate in right of his office.

The principal statutes relating to distribution are 22 & 23 Car. 2, c. 10; 29 Car. 2, c. 3; and 1 Jac. 2, c. 17.

Ordinaries to have power to call administrators to account and to make distribution, &c.

By 22 & 23 Car. 2, c. 10, s. 3, it is enacted, “ And also “ that the said Ordinaries and Judges respectively, shall “ and may and are enabled to proceed and call such administrators to account for and touching the goods of “ any person dying intestate; and, upon hearing and due “ consideration thereof, to order and make just and equal “ distribution of what remaineth clear (after all debts, “ funeral, and just expenses of every sort first allowed and “ deducted), amongst the wife and children, or children’s “ children, if any such be, or otherwise to the next of “ kindred to the dead person in equal degree, or legally “ representing their stocks, *pro suo cuique jure*, according “ to the laws in such cases, and the rules and limitation “ hereafter set down; and the same distributions to decree “ and settle, and to compel such administrators to observe “ and pay the same by the due course of his Majesty’s “ ecclesiastical laws; saving to every one, supposing him “ or themselves aggrieved, their right of appeal, as was “ always in such cases used.”

(*t*) *Onslow v. Wallis*, 16 Sim. 483; *Love v. Gaze*, 8 Beav. 472.

(*u*) 11 Geo. 4 & 1 Will. 4, c. 40, s. 2; *Taylor v. Haygarth*, 14 Sim. 8.

The customs of London, York and certain other places, saved by sect. 4 of 22 & 23 Car. 2, c. 10, are abolished by 19 & 20 Vict. c. 94, s. 1.

Distribution of estate.

Customs of London, &c. now abolished.

22 & 23 Car. 2, c. 10, s. 5.

How the surplusage to be distributed.

By sect. 5, it is further enacted, "that all Ordinaries
 "and every other person who by this act is enabled to
 "make distribution of the surplusage of the estate of any
 "person dying intestate, shall distribute the whole surplusage of such estate or estates in manner and form
 "following: that is to say, one-third part of the said surplusage to the wife of the intestate, and all the residue
 "by equal portions to and amongst the children of such
 "persons dying intestate, and such persons as legally
 "represent such children, in case any of the said children be then dead, other than such child or children
 "(not being heir-at-law) who shall have any estate by
 "the settlement of the intestate, or shall be advanced by
 "the intestate in his lifetime by portion or portions
 "equal to the share which shall by such distribution be
 "allotted to the other children to whom such distribution
 "is to be made: and in case any child, other than the
 "heir-at-law, who shall have any estate by settlement
 "from the said intestate, or shall be advanced by the said
 "intestate in his lifetime by portion not equal to the
 "share which will be due to the other children by such
 "distribution as aforesaid; then so much of the surplusage
 "of the estate of such intestate to be distributed to each
 "child or children as shall have any land by settlement
 "from the intestate, or were advanced in the lifetime of
 "the intestate, as shall make the estate of all the said
 "children to be equal as near as can be estimated: but
 "the heir-at-law, notwithstanding any land that he shall
 "have by descent or otherwise from the intestate, is to
 "have an equal part in the distribution with the rest of
 "the children, without any consideration of the value of
 "the land which he hath by descent or otherwise from
 "the intestate."

Advancement by portions.

Heir-at-law to have an equal part.

And by sect. 6, "in case there be no children, nor any Sect. 6.

Distribution of legal representatives of them, then one moiety of the said estate.
 22 & 23 Car. 2, residue of the said estate to be distributed equally to every
 c. 10, s. 6. of the next of kindred of the intestate who are in equal
 If no children. degree, and those who legally represent them."

Sect. 7. And by section 7, it is provided, "that there be no
 If no wife. representations admitted among collaterals after brothers' and sisters' children; and in case there be no wife, then all the said estate to be distributed equally to and amongst the children: and in case there be no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever."

Sect. 8. And by section 8, it is likewise enacted, "To the end
 No distribu- that a due regard be had to creditors, that no such distri-
 tion till after a bution of the goods of any person dying intestate be made
 year. till after one year be fully expired after the intestate's
 If debts after- death, and that such and every one to whom any distribu-
 wards appear, tion and share shall be allotted, shall give bond with suffi-
 then all to cient sureties in the said Court, that if any debt or debts,
 refund pro- truly owing by the intestate, shall be afterwards sued for,
 portionably. and recovered or otherwise duly made to appear, that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of that debt or debts, and of the costs of suit and charges of the administrator by reason of such debt, out of the part and share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the debt or debts so discovered after the distribution made as aforesaid."

Sect. 9. Finally, by section 9, it is enacted, "That in all cases
 Act not to where the Ordinary hath used heretofore to grant adminis-
 extend to ad- tration *cum testamento annexo*, he shall continue so to do,
 ministration and the will of the deceased in such testament expressed
*cum testa- shall be performed and observed in such manner as it
 mento annexo.* should have been if this act had never been made."

1 Jac. 2, c. 17, By 1 Jac. 2, c. 17, s. 7, "If after the death of a father
 s. 7. any of his children shall die intestate without wife or children, in the lifetime of the mother, every brother and

sister, and the representatives of them shall have an equal share with her." Brother and sister includes the half blood (x). Distribution of estate.

The Court of Probate does not entertain suits for the distribution of residue (20 & 21 Vict. c. 77, s. 23): such matters are the province of a court of equity.

The degrees of relationship are, for the purpose of distribution, computed in the same manner as for the purpose of the grant of administration. See "Administration—who entitled to." Degrees of relationship.

An estate *pur autre vie* is not distributable (y).

The following table shows the order in which distribution should take place, and the amounts to which each degree is entitled:—

	1. Husband	The whole.
	2. Wife	One-third.
	Children <i>per capita</i>	} The residue.
	and Issue of deceased children <i>per stirpes</i> ...	
	3. Wife	One-third.
	Grand-children, <i>per capita</i>	} The residue.
	and Issue of deceased grandchildren <i>per stirpes</i> ...	
First degree.	4. Wife	One-half.
	Father	The residue.
Second degree.	5. Wife	One-half.
	Mother, brothers and sisters, <i>per capita</i>	} The residue.
	and Children of deceased brothers and sisters, <i>per stirpes</i>	
Second degree.	6. Wife	One-half.
	Grandfathers and grandmothers	The residue.
Third degree.	7. Wife	One-half.
	Great grandfathers and great grandmothers	} The residue.
	Uncles and aunts	
	Nephews and nieces, <i>per capita</i>	} One-half.
Fourth degree.	8. Wife	
	Great-great-grandfathers and great-great grandmothers	} The residue.
	Great uncles and great aunts	
	Great nephews and great nieces.. .. .	} One-half.
	and Cousins german, <i>per capita</i>	
Fifth degree.	9. Wife	One-half.
	Great-great uncles and great-great aunts	} The residue.
	Children of great uncles and great aunts	
	and Children of consins german, <i>per capita</i>	} The residue.

(x) *Jessopp v. Watson*, 1 Myl. & K. 665. (y) *Oldison v. Pickering*, 3 Salk. 137; Carth. 376; 1 Ld. Raym. 96.

LIMITED GRANTS.

Grants whether of probate, of administration, with a will annexed, or of simple administration, are of various kinds, from the general grant which places the grantee fully in the position of the deceased, to those which limit his representation to a small fraction, as it were, of the deceased's rights or liabilities. The first are called general grants, the latter limited grants, as these grants only represent the deceased to a certain extent, the residue of the representation is contained in a grant of the rest of his property (*ceterorum*). Sometimes the general or undefined grant is made first, then it is made as a grant of the representation of the deceased, *save and except* some distinct portion; the representation of the deceased in either case passing away, as it were, in different directions.

The general practice is not to make a limited grant to a person, who is entitled to a general grant. Among the rules for the district registries this is provided for in cases of administration, but there is no corresponding rule amongst the rules for the guidance of the principal registry, although there, such is the practice. This practice, however, is not inflexible, and the Court may, although a district registrar may not, depart from it. Where A., a creditor, insured the life of his debtor, but the policy having by mistake been made payable to the representatives of the deceased, the Court granted administration to A., limited to the policy (*y*).

The limitation of grants, whether of probate or administration, may be caused either by the act of the deceased, or by the nature of the interest or estate to be transmitted.

Limited by act
of deceased.

“The Court may grant a limited probate where the testator has limited the executor” (*z*).—Sir George Lee.

By nature of
interest.

It is a rule that general letters of administration cannot

(*y*) *Patteson v. Hunter & another*, 30 L. J., P. & M. 272.

(*z*) *Sutton v. Smith*, 1 Lee, 280.

be granted to a person having an interest only in part of the effects of the deceased, but the grant must be limited to that part (a).

Limited grants may be divided into three classes, viz., those which limit the representation—

1st. In estate;

2nd. In time;

3rd. To a particular object. See Rules 29 and 30, P. R., Non-C., and 35 and 36, D. R.

1st. *Limited in Estate.*] The following are the most usual cases where the representation is limited in estate; viz.—

To a trust or other particular fund.

To a married woman's property, disposed under a power.

De bonis (i. e., where an executor or administrator has died leaving his deceased's property partly or wholly unadministered);

And the like.

In cases where the limitation is created by any document, such document must be brought into the registry. For it is not sufficient, in order to make out the title to a term of years, &c. with the view of obtaining administration, to refer to deeds, deducing such title in affidavits; the deeds themselves must be brought into the registry (b).

Documents must be brought into registry.

The Court will grant letters of administration to a *cestui que trust*, of a trust fund limited to that trust, when the trustee in whose name the fund stands is dead, and is without a personal representative, the parties entitled to represent the deceased trustee having been first cited; when there are several parties interested in the fund, the grant will be limited to the interest of the *cestui que trust* making the application, unless the other *cestuis que trust* assent to the grants extending to their respective interests (c).

To a trust fund.

(a) *Dodgson, In goods of*, 28 L. Tr. 265.

J., P. & M. 116.

(c) *Pegg v. Chamberlain & others*.

(b) *Keene, In goods of*, 1 Sw. & Tr. 527.

In estate.
To specific
fund devised.

Where a will bequeathed certain specific property, but had no residuary clause, the legatee was held to be entitled to a grant of administration, with the will annexed, limited to the property specified in the will (*d*). With respect to this case, the Judge seems afterwards (*e*) to have said that the party was miserably poor, and there were only two cases in which similar grants had been made.

To property
within juris-
diction.

Where a foreigner, inhabiting the State of Alabama, died on board an English vessel, on his voyage to England, possessed of property, chiefly bills of exchange, drawn on merchants in Liverpool, and entitled to a sum of money alleged to be in the hands of another person in this country; on the arrival of the ship in the port of London, the owner took possession of the bills of exchange, and there being no known relation or agent of the deceased in this country, and communication with his relations in the Southern States being difficult and uncertain by reason of the civil war and blockade of the Southern ports, the Court granted administration to the owner of the ship, limited to realize and collect the property which the deceased was possessed of or entitled to within the jurisdiction of the Court, and to invest the proceeds in the 3 per cent. consols (*f*).

To married
woman's pro-
perty.

As to the property of married women, see Rule 15, P. R., Non-C., and 18, D. R. In making a grant limited to the property of a married woman where there is a power before the Court and an averment that a testamentary paper was made in pursuance of a power, the Court is bound to grant probate, and thereby to leave it to the competent Court of construction to decide whether the testamentary paper is a due execution of, or operative under the power (*g*). The Court granted probate to the executors "limited to the settled property and all accumu-

To extent of
power.

(*d*) *Watson, In goods of*, 1 Sw. & Tr. 110.

(*e*) *Watts, In goods of*, 8 W. R. 340.

(*f*) *Wychoff, In goods of*, 3 Sw.

& Tr. 20; and see *Gudolle, In goods of*, cited *ibid.* p. 22.

(*g*) *De Chatelain v. De Pontigny*, 1 Sw. & Tr. 411; see also *Barnes v. Vincent*, 5 Moore, P. C. C. 201.

lations over which the deceased had a disposing power, In estate. and which she had disposed of (*h*).

Administration, with will (of a married woman made under a power) annexed, can only be granted to the extent of that power, to the person appointed by the will, and the husband will be entitled to a general grant *cæterorum bonorum* (*i*).

It frequently happens that before an executor or ad- *De bonis.* ministrator has fully carried out the provisions of the will, or distributed the assets, as the case may be, his office is determined by his death, inability or the like. It then becomes necessary to provide for the complete carrying out of the object, for which the original grant was made. The Court, in such a case, or it may be the deceased executor, appoints a new representative. This grant is called a grant *de bonis non administratis*, or shortly *de bonis non*, or *de bonis*, and is a grant limited in estate, being limited to the estate which the deceased had in his representative character. Of course it naturally happens that an administrator *de bonis* is a much more common character than an executor *de bonis*, for when a deceased executor dies leaving a will, and appointing an executor, he does not often appoint one person as executor of his own will, and another person as the executor of the will of the original testator; but there is nothing to prevent him so doing.

With regard to grants *de bonis*, it is requisite to consider Chain of what is called the chain of representation, and first it must representation. be remembered that the estate of a number of executors or administrators in the effects of a deceased is a joint estate, each being possessed of the whole, and the estate surviving from one to the other, with all the attributes peculiar to joint estates. When, therefore, there is only one person as representative of a deceased, whether originally so named, or as the last survivor of a number, then and not till then does his estate become transmissible.

(*h*) *Ledgard v. Garland*, 1 Curt. 286. (*i*) *Bowley v. Stubington*, 2 Lee, 537.

In estate.
De bonis.
 Chain of
 representation.

And where there are two executors and one proves the will and dies, the executorship survives to the other (*k*); and where L. appointed R. sole executrix and residuary legatee, and R. died in the lifetime of L., and appointed A. and B. her executors, and A. alone proved R.'s will, power being reserved to B., it was held that B. must be cited as well as A. before administration, with the will annexed of L., could be granted to a legatee (*l*).

In considering the transmission of representation there are important differences between a deceased executor who has taken out probate and a deceased administrator, and they all arise from the different characters of each. An executor is a person in whom the testator has reposed his trust; an administrator is a mere officer of the Court. I say an executor *who has taken out probate*, because it is now provided that whenever an executor appointed in a will survives the testator, but dies without having taken probate, the right of such executor wholly ceases, and the representation of the deceased goes as though there had been no such appointment (*m*); and this appears to be merely a declaration of the old law (*n*).

Thus, where a testator appointed A., B. and C. his executors; A. and B. proved the will, power being reserved to C.; B. survived A., and died in the lifetime of C., having made a will and appointed an executor:—Held, under 21 & 22 Vict. c. 95, s. 16, that upon the death of C. the executor of B., the surviving acting executor, became the personal representative of the original testator (*o*).

“It has for many years been the practice of this Court (Prerogative Court of Canterbury) that an executor taking probate of the will of an executor becomes executor of the will of the first testator, and is not permitted to renounce

(*k*) *House & another v. Lord Petre*, 1 Salk. 311.

(*l*) *Linch, In goods of*, Deane & Sw. 294.

(*m*) 21 & 22 Vict. c. 95, s. 16.

(*n*) *Isted v. Stanley*, Dyer, 372.

(*o*) *Lorimer, In goods of*, 31 L. J., P. & M. 189.

probate of the first will and take probate of the second.” In estate.
—Sir H. Jenner (*p*). *De bonis.*

Nevertheless, Lord Hardwicke said that his opinion was clear that “if an executor die before he has administered, the effects unadministered shall not go to the representative of the executor but to the administrator *de bonis non* of the testator in trust for his next of kin (*q*). In this case it does not appear whether or not the first executor had taken out probate. If he had, the case is scarcely to be supported, but if he had not, then the law laid down by the chancellor agrees with the general principles in other cases. For “the administering executor may prove his “testator’s will, because he is the person named in the “will; and if he does so, his executor shall be executor “to the first testator, because there needs no new probate” (*r*). Chain of representation.

But unless the first executor prove the will of the original testator the chain is broken, even although such first executor partially administer the effects; in such a case the Court will make an original grant of administration, with the will annexed, to the next of kin (or party entitled) of the original testator (*s*). Mere administering without proving insufficient.

The executrix of an executor is entitled to an administration *cum testamento annexo* in preference to the widow of the original testator (*t*).

Where A. died leaving a will whereby he appointed his wife sole executrix and universal legatee; she took probate and afterwards married B., and during her coverture made a will in execution of a power vested in her, and appointed B. sole executor; upon her death B. took limited probate of her will and also administration of the rest of her effects: —Held that B., as representing the whole of his wife’s Traced through feme covert.

(*p*) *In goods of Perry*, 2 Curt. Salk. 309.
655. (*s*) *Ibid.* 308.

(*q*) *Lloyd v. Stoddart*, Amb. (*t*) *Thomas v. Baker*, 1 Lee,
152. 341.

(*r*) *Wankford v. Wankford*, 1

In estate.

*De bonis.*Chain of
representation.

personal estate, was entitled to administration of the unadministered effects of A. (*u*).

A., a married woman, the sole executrix and universal legatee named in the will of B., took probate of the same, and died leaving part of his estate unadministered. C., the sole executrix named in the will of A., took probate of the same, limited to the property over which A. had a power of disposal, and also administration of the rest of her goods:—Held that C. should take a grant of administration, with the will annexed, of the unadministered estate of B., and not a supplemental grant of administration of the goods of A., limited to such personal estate as vested in A. as sole executrix of the will of B. (*x*).

To whom.

Where A. died, having appointed B. executor of his will, and B. proved the will and died, leaving part of the estate unadministered, the Court made a grant *de bonis non*, with the will annexed, to the administrator of B., the parties entitled in priority being abroad and difficult to be found, and the applicant representing three-fourths of the estate; but required that security should be given to the amount of the share of the parties entitled to priority (*y*).

Representative
of residuary
legatee.

A. died in 1832, leaving a will whereof he appointed B., C. and D. executors, and B. residuary legatee: C. alone proved the will, power being reserved to grant probate to the other executors: in 1847 B. died leaving a will, appointing E. sole executrix, who duly proved B.'s will: in 1855 C. died intestate, leaving part of the personal estate of A. unadministered: D., the surviving executor of A., not having appeared to a citation, calling upon him to accept or refuse probate of the will of A., administration, with the will of A. annexed, was granted to the attorney of E., then abroad, as the personal representative of the residuary legatee of A., the chain of executorship having been broken (*z*).

Chain broken.

(*u*) *Martin*, In goods of, 32 L. J., P. & M. 5.

(*x*) *In the goods of Richards*, 35 L. J., P. & M. 44.

(*y*) *In the goods of Hicks*, 39 L. J., P. & M. 27.

(*z*) *Collinson v. Mawe*, 28 L. J., P. & M. 90.

Where a married woman made a will under a power, and appointed two executors, one of them proved, and the husband took out a *cæterorum* administration; the deceased was the executrix of a will which she had proved:—Held that the chain of executorship was not continued by the appointment of executors made under the power, and that the residuary legatee of the original testatrix was therefore entitled to a grant of administration *de bonis non*, without citing those executors to accept or renounce probate (*a*).

In estate.
De bonis.
Broken chain
of representa-
tion.

A. died in Ireland: B., his executor, proved his will there: B. died, and C., his executor, proved his will in Ireland, and had the Irish grant resealed in the principal registry of the Court of Probate in England:—Held that the chain of representation was not continued, and that C. was not entitled to a grant of administration of the personal estate and effects in England of A.'s wife, who predeceased her husband (*b*).

If an administrator die, leaving part of the goods unadministered, the rules respecting original grants apply; for instance, where there is a will which appoints a residuary legatee, such person has precedence and is entitled to a grant *de bonis non*.

The Court has, however, a discretion in the matter, and on sufficient grounds shown will depart from the general practice of the registry, by which a party originally entitled in distribution is preferred, in making a grant *de bonis non*, to a party having a derivative interest, *e. g.*, the personal representative of the next of kin, and will make the grant to the latter (*c*).

The Court is not obliged to grant an administration *de bonis* to the person having the largest interest in the personal property of the intestate (*d*).

Not to largest
interest.

- (*a*) *Hughes, In goods of*, 29 1062.
L. J., P. & M. 165. (*c*) *In the goods of Carr*, 1 L. R.,
Prob. 291.
(*b*) *Gaynor, In goods of*, 38
L. J., P. & M. 79; 1 L. R., Prob. (*d*) *Cardale v. Harvey*, 1 Lee,
723; 21 L. T., N. S. 367; 17 W. R. 177.

In estate.
De bonis.

The statute 21 Hen. 8, c. 5, applies only to such as are next of kin at the time of the death; therefore the Court made the *de bonis non* grant to the executor of the administrator (the sole next of kin at the death) in preference to persons entitled in distribution, who had received their shares and signed releases (*e*). Again, the Court is not bound by the statute, it always grants the administration to those who have the interest; administration *de bonis non* was granted to a person entitled under a deed of gift from the first administratrix to the whole beneficial interest in preference to one who was not next of kin at the time of the death, and who consequently had no statutable right (*f*).

To representa-
 tive interest.

Administration *de bonis non*, with a will annexed, was granted to a representative interest, entitled to seven-twelfths of the residuary estate, without citing those having a direct interest as entitled in distribution (*g*).

F. died in 1836, leaving a will and one codicil, and therein appointed three executors and residuary legatees in trust; two renounced, and the third took probate, but died in 1853 intestate; all the beneficial residuary legatees named in the will and codicil then renounced except S., and on his being cited and not appearing, a grant *de bonis non* (will annexed) was made to R. as a creditor; he died in 1858, leaving personalty of F. unadministered: F. was indebted to his co-trustees of the marriage settlement of D., in respect of certain trust monies misappropriated by him, which had been the subject of certain proceedings in Chancery; by indenture of 28th of December, 1860, the executors of the surviving trustees agreed with the persons beneficially entitled to the trust fund to transfer all their right and title to sue, &c., on receiving discharges from such persons; and the Court, on S. being cited and not appearing, granted to the nominee of the assignee of

(*e*) *Savage v. Blythe*, 2 Hag. Ecc. 155.

R. App. 150.

(*g*) *Middleton, In goods of*, 2

(*f*) *Almes v. Almes*, *ibid.*, App. Hag. Ecc. R. 60.

the executors of the surviving trustees, administration *de bonis non* (will annexed) of F., limited to revive and substantiate the proceedings in Chancery (*h*).

In estate.
De bonis.

A female, having taken administration to an estate as a creditor, married and died; under the administration, she got in a considerable portion of the estate, and paid some of the debts, but did not set apart any particular fund in payment of her own debt:—Held that the husband was not entitled in his own right as a creditor, but only as the representative of his wife, to take administration of the unadministered effects of the deceased (*i*).

Right of husband to *de bonis non* of wife's administration.

A joint grant of administration *de bonis non* may be made under 20 & 21 Vict. c. 77, s. 73, to a next of kin and a person entitled in distribution, the next of kin consenting to the grant, and there being special circumstances rendering such joint grant convenient (*k*).

Joint grants.

Testator left by his will to his wife, a life interest in his real, leasehold and personal estate, with permission to consume such portion of the personal estate as was consumable by nature; on her death or re-marriage, he gave his real and leasehold estates and such personal estate as then remained unconsumed, to his children in equal shares, their executors, administrators and assigns, with a proviso that if all and every his children died before obtaining a vested interest under the will, the property should go in equal shares to his then next and nearest of kin, and the then next and nearest of kin of his wife; the testator's only child survived him, but died in his mother's lifetime and previous to her re-marriage; the wife died leaving part of the estate unadministered:—Held that the child did not take a vested interest under the will, and administration was granted to the next of kin of the testator (*l*).

(*h*) *Day v. Thompson*, 3 Sw. & Tr. 169.

(*k*) *In the goods of Grundy*, 1 L. R., Prob. 459; 37 L. J., P. & M. 21.

(*i*) *Risdon, In goods of*, 1 L. R., Prob. 637; 38 L. J., P. & M. 40; 20 L. T., N. S. 330; 17 W. R. 576.

(*l*) *Greenhalgh v. Bates*, 39 L. J., P. & M. 44.

In estate.
De bonis.
 To legatees.

Limited administration *de bonis non*, with the will annexed, will not generally be granted to a legatee; the person entitled to a general grant should be first cited, and if they do not take administration, the legatee will be entitled to a general grant (*m*). Where the surviving executor under a will which did not dispose of the residue, died, leaving effects of the testator unadministered, and A., as legatee was solely interested in 750*l.* 3*l.* per cent., the Court refused to grant administration *de bonis non*, with the will annexed, to A., limited to that fund, the persons entitled to a general grant not having been cited, although it appeared that the service of a citation on them would be attended with great difficulty and expense (*n*).

Administration *de bonis non*, limited to a certain legacy, was granted to the representative of the substituted legatee, without citing the representative of the residuary legatee resident abroad, but by practice entitled to the general *de bonis* grant; no claim to this legacy having since the death (in 1797) of the residuary legatee (also executor and legatee for life) been made by his representative (*o*).

2*nd.* *Grants limited in Time.*] The following are the more usual cases where a grant is limited in time :

Till a will be found.

Durante absentia.

Durante minoritate.

Durante dementia.

Pendente lite.

Till will be
 found.

A will in existence, after the testator's death, being accidentally lost and the contents unknown, administration limited, till the will be found, granted (on justifying securities) to the widow alone, with a minor daughter, entitled in distribution (*p*).

Administration was granted to a widow till a will

(*m*) *Watts, In goods of*, 29 L. J., Hag. Ecc. R. 59,
 P. & M. 108.

(*n*) *Ibid.*

(*o*) *Steadman, In goods of*, 2

(*p*) *Re Campbell*, 2 Hag. Ecc. R.
 555.

should appear, in preference to the grant of a simple administration to a brother (q). In time.

See 38 Geo. III. c. 87, ss. 1, 2, 3, 4 and 5; Court of Probate Act, 1857, s. 74; Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 18, in App. 1; and Rules 31, 32, P. R., Non-C., and 37, 38, D. R. Under the first of these statutes administration is to be granted to a *creditor*, *next of kin*, or *legatee*. It only applied to those cases where a will had been executed and executors appointed who had taken probate, and not to cases where administration, or administration with will annexed, had been granted (r). *Durante absentia.* 38 Geo. III. c. 87.

The Court of Probate Act, 1857, extends this to cases where letters of administration have been granted. But in both these cases it was necessary for the applicant to intend to institute proceedings in Chancery and to swear so in his affidavit.

The last statute, C. P. A. 1858 (21 & 22 Vict. c. 95), s. 18, however, does away with this necessity, and in all cases where the executor or administrator, at the expiration of twelve calendar months from the death of the deceased, is resident out of the jurisdiction, enables the Court to grant the special administration in the form given in the statute 38 Geo. III. c. 87 (s). The practice of granting administration *durante absentia* of an executor was, however, of much earlier date than even the statute of Geo. III. (t).

It must also be observed that these enactments apply to cases where probate or administration has already been granted, and they must not be confounded with the Court of Probate Act, 1857, sect. 73, which provides for the case where no probate or administration has as yet been granted.

Though the *legatee* only is mentioned in the 38 Geo. III. c. 87, yet the Court granted a limited administration to *To whom, representative of legatee.*

(q) *Lloyd v. Lloyd*, 2 Lee, 321.

(t) *Slater v. May*, 2 Ld. Raym.

(r) *Hay v. Willoughby & Hill*, 2 Robert. 184.

1071; *Lucas v. Lucas*, 2 Lee, App. 576.

(s) 38 Geo. 3, c. 87, s. 3.

In time.
Durante
absentia.

the personal representative of a legatee, the executor being out of the jurisdiction, holding that the case came within the spirit, if not within the letter, of the statute (*u*).

To new trustee.

The executor and trustee under a will, lent a portion of the trust fund on the security of a promissory note made payable to him as executor; he subsequently became bankrupt and went abroad, and a new trustee was appointed in his place by the Court of Chancery; administration, with the will annexed, was granted to the new trustee, limited to the interest of the *cestui que trust* in the money due on the promissory note (*x*).

To attorney.

When the party entitled to administration was within the jurisdiction, the grant could not be made for his use and benefit to his attorney (*y*).

Where upon the death of a testator, A., the surviving executor, being resident in Sydney, B. who held a power of attorney to act for A. in this country, sent out to him, for execution, a special power of attorney, to authorize B. to take out administration, with the will annexed, for A.'s use and benefit, and also a proxy of renunciation in case he should wish to renounce: the residuary legatee for life was incompetent from senility to take administration; and subject to her interest, B. and others were entitled to the residue: the majority of the persons interested under the will, being desirous that a grant should be made without waiting for the return of the power of attorney or renunciation, the Court granted administration, with the will annexed, to B., limited until such time as A. should apply for probate, or his attorney for administration, with the will annexed (*z*).

Determination
of.

Grants *durante absentia* to attorneys of executors or parties entitled to administration are not revoked, but are pronounced to have ceased and expired on the appli-

(*u*) *Collier, In goods of*, 31 L. J.,
P. & M. 63.

(*w*) *Hampson, In goods of*, 35
L. J., P. & M. 1.

(*y*) *In the goods of Keane*, 1 Hag.
Ecc. R. 692.

(*z*) *Lewis, In goods of*, 29 L. J.,
P. & M. 94.

cation of the executor or party entitled for probate or administration, and the usual affidavit that no suits were pending. The Court declared that for the future (since 1832) such grants should be for the use, &c., and until the executor (or party entitled to the administration) should apply for and obtain probate or administration (*a*). In time.
Durante absentia.

This regulation was, no doubt, to avoid the great inconveniences of the old grants *durante absentia*, which terminated of themselves by the mere return of the executor or administrator, and put an end summarily to all proceedings instituted by the temporary administrator (*b*). This must apply to grants independent of the statute, for it seems that administrations granted *durante absentia* under the 38 Geo. III. c. 87, do not expire by the return or even the death of the executor (*c*).

By Rule 33, P. R., Non-C., "Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next of kin or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with." *Durante minoritate.*

Rule 34, P. R., Non-C. "In cases of infants (*i. e.*, under the age of seven years) not having a testamentary guardian, or a guardian appointed by the High Court of Chancery, a guardian must be assigned by order of the Judge, or of one of the Registrars; the Registrar's order is to be founded on an affidavit, showing that the proposed guardian is either *de facto* next of kin of the infants, or that their next of kin *de facto* has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship."

Rule 35, P. R., Non-C. "Where there are both minors and infants, the guardians elected by the minors may act

(*a*) *Cassidy, In goods of*, 4 Hag. 1071.

Ecc. R. 360.

(*c*) *Hannay v. Taynton*, 3 B. &

(*b*) *Slater v. May*, 2 Ld. Raym. P. 26.

In time.
Durante
minoritate.

for the infants without being specially assigned to them, by order of the Judge or a Registrar, provided that the object in view is to take a grant. If the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the Judge or of a Registrar."

Rule 36, P. R., Non-C. "In all cases where grants of administration are to be made for the use and benefit of minors and infants, the administrators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery or other competent Court, or are the testamentary guardians of the minors or infants."

See also the corresponding rules for the district registries, 39, 40, 41 and 42, D. R.

Distinction
 between minors
 and infants.

By the ecclesiastical law there is a distinction between *infancy* and *minority*. Infancy continues up to the age of seven: minority commences on completion of the latter age and continues until the age of twenty-one.

To whom.

In the case of an *infant* a guardian is assigned by the Court, and the child has no voice in the matter, but a *minor* may elect his own guardian.

If, however, there are several executors, and any one of them be of age, the latter can execute the will, and there is no necessity to grant administration *durante minoritate*.

If the person entitled to administration be a minor, administration is granted to some person to act for him until he attains the age of twenty-one. Upon attaining such age he may act for himself, and the grant of administration to the appointee of the Court expires.

To husband.

Where a minor wife is entitled to administration she may elect her husband.

To elected
 guardian.

The minor may elect a guardian in Court, but the usual course is for him to make the appointment under his hand and seal by an instrument duly attested.

Where an executor is unable to take the grant owing In time.
to his minority, administration *cum testamento annexo* may *Durante*
be granted during the minority of the executor to a testa- *minoritate*.
mentary trustee (*d*).

Where the executor is an infant there may be a grant To testamen-
testamento annexo to testamentary trustees, for the use of tary trustee.
the infant executor and next of kin till he should arrive at
legal age to take probate (*e*).

The testamentary guardian has a right to administra-
tion for the use and benefit of minors, in preference to the
guardian elected by them (*f*).

The Court does not grant administration to trustees,
merely as such. Testamentary guardians can only be
appointed by a will executed according to statute 12
Car. II. c. 24, s. 8 (*g*).

When a minor is sole next of kin and residuary legatee,
she may select a guardian for all purposes in law, and
especially for taking administration *cum testamento an-*
nexo (*h*).

Where the persons entitled in distribution to the effects
of an intestate were minors, and their next of kin were
abroad, the Court, under the 73rd section of the 20 & 21
Vict. c. 77, granted administration for their use and bene-
fit to a guardian elected by them, without requiring that
the next of kin should be cited or renounce (*i*).

Administration *durante minoritate* of children in the To uncle,
East Indies was decreed to an uncle resident in Ireland, grandfather
he giving full justifying security; the grandfather, to whom passed over.
as next of kin the grant would naturally have passed, being
upwards of eighty, and also resident in Ireland (*j*).

(*d*) *Appleby v. Appleby & Jack-* 327.
son, 1 Lee, 135.

(*e*) *Hughes v. Richards*, 2 Lee,
543; see 37 Geo. 3, c. 87.

(*f*) *Morris, In goods of*, 31 L. J.,
P. & M. 80.

(*g*) *Fawkenner v. Jordan*, 2 Lee,

(*h*) *Ibid*.

(*i*) *Hagger, In goods of*, 32 L. J.,
P. & M. 96.

(*j*) *Re Ewing*, 1 Hag. Ecc. R.
381.

- In time. The Court is not compellable to grant administration to the guardian elected by a minor, although, when the minor is nearly of age, his or her choice would have much weight with the Court (*k*).
- Durante minoritate.* Discretion of Court.
- To father. The father has the first right to the guardianship of his infant child, and next to him persons appointed by him by deed or will, but such persons may be disregarded by the Court when there are special reasons (*l*).
- Father passed over. A woman, whose marriage had been dissolved on the ground of her husband's adultery and desertion, died intestate, leaving issue of the marriage one child, a minor: the Court decreed administration to the grandmother of the child, passing by the father, upon a copy of the decree dissolving the marriage being filed, and also copies of letters from him showing that he was unfit to take the grant (*m*).
- Powers of. An administrator *durante minoritate* may do all acts that an executor or administrator might do, and which are for the advantage of the infant and the estate.
- Duration of. It is contrary to the practice of the Court to extend a grant for the use and benefit of minors beyond the time when the eldest of them attains his majority.
- Durante minoritate et dementia.* Where an intestate left a widow and an infant, and the widow took out administration, but became lunatic, administration was also granted to the aunt of the infant, for the use and benefit of the widow and infant, during the incapacity of the widow and the minority of the infant (*n*).
- Durante dementia.* Where a sole executor or administrator becomes a lunatic, it is the ordinary practice of the Court to make a limited grant to his committee for his use and benefit during his lunacy; and the same is the practice where
- (*k*) *Fawkenor v. Jordan*, 2 Lee, 327. (*m*) *In the goods of Hay*, 35 L. J., P. & M. 3; 1 L. R., Prob. 51.
- (*l*) *Wellesley v. Duke of Beaufort*, 2 Russ. 1. (*n*) *In goods of Binfield*, 1 Lee, 625.

the insanity has supervened before the party entitled has taken the grant (*o*). In time.
Durante
dementia.

Where one of three joint administrators became lunatic, in consequence of which the interest of certain property of the deceased could not be received from the Bank of England, the Court directed that upon the letters of administration being brought back into the registry by the two sane administrators and the committees of the insane one, by consent of the latter, letters of administration should issue to the two sane administrators alone (*p*).

Where the executor's state of mind and body was such, from paralytic affection, as to render him incapable of acting, but no committee was appointed, the Court granted administration during the life and incapacity of the executor to the residuary legatee, the next of kin not opposing (*q*). No committee.

"The grant of this administration is in the discretion of the Court; no party being of right entitled to it" (*r*). Sir H. Jenner Fust.

Administration, with will annexed, *de bonis* was granted to the executors of a sister, the administratrix, deceased, for the use and benefit of the surviving sister, the sole next of kin, during her imbecility without citing her next of kin, who were thirty in number, and resident in various places, some in America; though had one of the next of kin of the imbecile applied for administration, the Court would have granted it (*s*).

The practice seems to be, in general, to prefer the committee of the lunatic; for where A. died intestate, without child or parent, leaving his widow, his brother and others entitled in distribution, him surviving; the widow became a lunatic, and a committee of her person and estate was appointed by the Court of Chancery; on

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| <p>(<i>o</i>) <i>Alford v. Alford</i>, Dea. & Sw.
322.
(<i>p</i>) <i>Phillips</i>, <i>In goods of</i>, 2 Add.
335.
(<i>q</i>) <i>Crump</i>, <i>In goods of</i>, 3 Phill.</p> | <p>497.
(<i>r</i>) <i>Southmead</i>, <i>In goods of</i>, 3
Curt. 28.
(<i>s</i>) <i>Ibid</i>.</p> |
|--|--|

In time.
Durante
dementia.

the question of grant of administration, it was held that the ordinary preference exercised by the discretion of the Court in favour of the widow, would extend to such committee, unless the next of kin could show special cause to the contrary (*t*).

Service on
lunatic.

Where a person whom it is necessary to cite as interested in the estate of a deceased is a lunatic, and a committee of his estate has been appointed, service of the citation on such committee is sufficient; it is not necessary that the lunatic should be personally served in the presence of some medical man (*u*).

Pendente lite.

By the 70th section of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), it is enacted, that "pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate, and every such administrator shall be subject to the immediate control of the Court and act under its direction.

21 & 22 Vict.
c. 95, s. 22, to
apply to ap-
peals.

By statute 21 & 22 Vict. c. 95, s. 22, "all the provisions contained in the Court of Probate Act respecting grants of administration pending suit, shall be deemed to apply to the case of appeals to the House of Lords under the said act." Administration *pendente lite* under this section was granted to a defendant in a testamentary suit, the plaintiff not opposing the application (*w*).

When granted.

The Court has power under 20 & 21 Vict. c. 77, s. 70, to appoint an administrator *pendente lite* in contested testamentary and administration suits on the application of a person who is a party to such suit. In an adminis-

(*t*) *Alford v. Alford*, Dea. & Sw. J., P. & M. 89.
322.

(*w*) *De Chatelain v. De Pontigny*,
(*u*) *Surtees, In goods of*, 28 L. 27 L. J., P. & M. 18.

tration suit which was likely to be protracted, the Court appointed an administrator *pendente lite*, at the instance of a creditor who was not a party to the suit (*x*). In time.
Pendente lite.
When granted.

In a testamentary suit in which there was no dispute as to the appointment of the executors, and one of them was willing to act, the Court refused to appoint an administrator *pendente lite*, unless it could be shown that there was something requisite to be done in relation to the estate, which the executor before probate could not do (*y*).

Where there is a dispute as to the right to administer an estate, the Court has power to grant administration *pendente lite* (*z*). It will not, however, grant administration *pendente lite* without due cause; the necessity for such administration must be shown (*a*).

Administrations *pendente lite* ought never to be granted without special cause (*b*); though they may be granted where there is an executor named in the will propounded, if there be good reason for such administrations (*c*).

The plaintiff and deceased, as joint tenants, had for many years leased certain farms, each having provided a portion of the capital required for their management; the plaintiff was the executor named, not only in the will in dispute, but also in a will of earlier date, which was propounded by one of the defendants; the Court refused, on a suggestion that the plaintiff was selling the stock and produce of the farms unduly and unnecessarily, to appoint an administrator *pendente lite* (*d*).

The Court will appoint an administrator *pendente lite* in all cases in which it is the practice of the Court of

(*x*) *Tichborne v. Tichborne*, 1 329.

L. R., Prob. 730.

(*b*) *Sutton v. Smith*, 1 Lee, 207.

(*y*) *Mortimer v. Paull*, 39 L. J.,
P. & M. 47.

(*c*) *Maskeline v. Harrison*, 2
Lee, 258.

(*z*) *Walker v. Woollaston*, 2 P.
Wms. 589.

(*d*) *Horrell v. Witts*, 35 L. J.,
P. & M. 55.

(*a*) *Northey v. Cook*, 1 Add.

In time. Chancery to appoint a receiver (*e*), and even if a receiver
Pendente lite. has already been appointed (*f*).

Administrators *pendente lite* are the appointees of the
pendente lite, what they Court, and are not to be merely considered as the nominees
 are. or agents of the several parties, on whose recommendation
 they are selected (*g*).

To whom. In a testamentary suit the Court pronounced for the
 will, and probate was delivered out to the executors, the
 defendants; the plaintiff appealed, and pending the appeal
 the executors were unable to make such a title to certain
 leasehold property, part of the testator's estate, as the pur-
 chaser was entitled to require; the Court, under these cir-
 cumstances and no one opposing, allowed the executors to
 bring in the probate, and made to them a grant of admi-
 nistration *pendente lite* (*h*).

In the interest suit between the Queen's proctor and a
 defendant asserting himself to be the lawful nephew of a
 deceased intestate, the Court appointed A. B., who had
 been made receiver in respect of the same estate in pro-
 ceedings in Chancery, to be administrator *pendente lite*,
 on his affidavit that the estate in certain particulars would
 be benefited by being dealt with by a person clothed with
 such authority, and on consent of the parties to the
 suit (*i*).

In appointing an administrator *pendente lite*, the Court
 cannot, except with the consent of all interested parties,
 give him special powers to pay an annuity, by way of
 maintenance, to one of the residuary legatees, who is also
 one of the next of kin (*k*).

(*e*) *Bellev v. Bellev*, 34 L. J.,
 P. & M. 125.

(*f*) *Tichborne v. Tichborne*, 1
 L. R., Prob. 730; 38 L. J., P. &
 M. 70.

(*g*) *Stanley v. Bernes*, 1 Hag.
 Ecc. R. 222; C. P. A. 1857, s. 70.

(*h*) *Wright v. Rogers*, 40 L. J.,
 P. & M. 8.

(*i*) *Procurator-General v. Wil-*
liams, 3 Sw. & Tr. 353.

(*k*) *Whittle v. Keats*, 35 L. J.,
 P. & M. 54.

Administration *pendente lite* is usually granted to neither of the parties contesting the suit, but to some indifferent person (*l*). In time.
Pendente lite.
To whom
granted.

An administration *pendente lite* may be granted jointly to the nominees of the parties litigant (*m*).

Where the interest of one party is certain, his nominee is preferred; for where administration was contested between a son and an asserted wife, administration *pendente lite* was given to the nominee of the son, in preference to the nominee of the wife; because his interest was certain, and that of the wife uncertain (*n*).

Where each of two persons claimed to be the widow of a deceased, administration *pendente lite* was granted to the nominee of the one who was living with him at the time of his death; the nominee to lodge the money, as received, in the bank (*o*).

An administrator *pendente lite*, acting under an order of the Court of Chancery, which directed the personal estate of the intestate to be applied in payment of her debts and funeral expenses in a due course of administration, advertised for sale the unrealized portions of the estate, consisting chiefly of personal ornaments and family relics; the estate, exclusive of such articles and things, was insufficient to meet the debts proved and claimed, but plaintiff, in order to prevent the sale, was willing to deposit in the registry a sum sufficient to cover the deficiency:—The Court, though deeming the offer of the plaintiff a reasonable one, declined to restrain the administrator from proceeding with the sale, and intimated that as a rule it would not interfere with an administrator acting under an order of the Court of Chancery (*p*).

As soon as the suit is concluded the administrator *pen-*

(*l*) *Stratton v. Ford*, 2 Lee, 49.

527.

(*m*) *Hellier v. Hellier*, 1 Lee, 281.

(*p*) *Tichborne v. Tichborne* and
In the goods of Tichborne, 39 L. J.,
P. & M. 22.

(*n*) *Bond v. Bond*, 1 Lee, 333.

(*o*) *Taylor v. Taylor*, 1 Lee,

In time.

Pendente lite.

To whom
granted.

dente lite is *functus officio* so far as the duties of administrator are concerned, save and except paying over to the proper person all that he has received in his character of administrator (*q*).

When all the issues in a suit have been found for the executor propounding a will, if an administrator *pendente lite* has been appointed, the regular course is not to move to discharge him, but to take out probate and call on the administrator to show cause why his grant should not cease (*r*).

Remuneration
to.

The Court may direct that administrators and receivers appointed pending suits, involving matters and causes testamentary, shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court shall think fit (*s*).

Powers of.

An administrator *pendente lite* has now all the rights and powers of a general administrator, except the right of distributing the personal estate (*t*).

Receiver of
real estate
pendente lite.

By the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 71, it is enacted, that "it shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid, or any other person, to be receiver of the real estate of any deceased person pending any suit in the Court touching the validity of any will of such deceased person by which his real estate may be affected; and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the Court may direct.

The Court
may require
security from.

By Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 21, "It shall be lawful for the Court of Probate to require security by bond in such form as by any rules and orders shall from time to time be directed, with or without sureties, from any receiver of the real estate of any deceased person appointed by the said Court, under section

(*q*) *Re Graves*, 1 Hag. 313.

(*s*) 20 & 21 Vict. c. 77, s. 70.

(*r*) *Duprez v. Veret*, 20 L. T.,

(*t*) *Ibid.*

N. S. 331.

seventy-one of the Court of Probate Act, and the Court may, on application made on motion or in a summary way, order one of the Registrars of the Court to assign the same to some person to be named in such order; and such person, his executors or administrators, shall thereupon be entitled to sue on the said security, or put the same in force in his or their own name or names both at law and in equity, as if the same had been originally given to him instead of to the Judge of the said Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount due in virtue thereof.”

In time.
Receivers of
real estate.

The provisions respecting receivers of real estate are new; the Ecclesiastical Courts had no jurisdiction in such matters.

The Court has no jurisdiction to appoint a receiver of the real estate of a deceased when the only litigation is by petition in reference to the individual appointed executor and there is no suit pending, touching the validity of the will (*u*).

Upon motion for the appointment of a receiver under 20 & 21 Vict. c. 77, s. 71, it must appear upon affidavit that the heir at law has been cited (*x*).

3. *Grants limited to a particular Object.*] Grants may be made—

Ad litem, limited to recover certain sums (y), to substantiate proceedings in Chancery (z).

To the receipt of dividends in the English funds (a).

To assign a term (b).

To collect the goods of the deceased (ad colligenda bona).

To deal with a sum set apart to meet two legacies (c);
and the like.

(*u*) *Grant v. Grant*, 1 L. R., Prob. 654; 38 L. J., P. & M. 55.

(*x*) *Purdey v. Field*, 33 L. J., P. & M. 73.

(*y*) *Stanley v. Bernes*, 1 Hag. Ecc. R. 221.

(*z*) *Harris v. Milburn*, 2 Hag. Ecc. R. 62.

(*a*) *Re Countess de Cunha*, 1 Hag. Ecc. R. 237.

(*b*) *Re Powell*, 3 Hag. Ecc. R. 195; *Crosley v. Archdeacon of Sudbury*, *ibid.* 197.

(*c*) *Collier, In goods of*, 2 Sw. & Tr. 444.

To a particular
object.
Ad litem.

Such administration is granted when the proper representatives of the deceased will not take upon themselves to act, and when it is necessary that the interests of the deceased should be represented in the proceedings.

15 & 16 Vict.
c. 86, s. 44.

It is enacted by 15 & 16 Vict. c. 86, s. 44, that if, in any suit or other proceeding before the Court of Chancery, it shall appear that any deceased person who was interested in the matters in question has no legal representative, it shall be lawful for the Court either to proceed in the absence of any person representing the estate of such deceased person, or to appoint some person to represent such estate for all the purposes of the suit or other proceedings, on such notice to such person or persons, if any, as the Court shall think fit, either specially or generally by public advertisements, and the order so made by the said Court, and any orders consequent thereon, shall bind the estate of such deceased person in the same manner and in every respect as if there had been a duly constituted legal personal representative of such deceased person, and such legal personal representative had been a party to the suit or proceeding, and had duly appeared and submitted his rights and interests to the protection of the Court.

Since this statute administrations of this description have not been so frequent in Chancery as before, their necessity being somewhat obviated. The act enables the Court of Chancery to proceed in any suit, &c. without any representative of a deceased person interested in the matters in question or to appoint one. This section, however, only applies to proceedings *in Chancery*, and only then, to those cases in which there is a difficulty either from insolvency or some other cause, in obtaining representation to a deceased party (*d*).

Nor does it enable the Court of Chancery in an administration suit to dispense with a personal representative

of the testator whose estate is to be administered in the suit (*e*). To a particular object.

Ad litem.

Nor will the personal representative of a trustee be dispensed with under this section where such representative must, of necessity, be active in the performance of the decree to be made as to the execution of the trust (*f*), and in various similar cases (*g*).

The following are instances of administrations *ad litem* which have been granted to file a bill (*h*): to answer a suit (*i*); to prove a debt under a decree (*k*); and the like. The grant runs "to attend, supply, substantiate, and confirm the proceedings already had, or that shall or may be had in the said suit in the High Court of Chancery, or in any other cause or suit which may be commenced in the said Court, or in any other Court between the said parties or any other parties, touching or concerning the matters at issue in the said suit, and until a final decree shall be made or had therein, and the said decree carried into execution, and the execution thereof fully completed." Notwithstanding the last words of the order the grantee can only carry on the suit to its termination, he cannot receive its fruits, and therefore it is necessary, if such should be desired, to add, "and to receive any sum or sums of money which shall be pronounced by any or such final order or decree to be due and payable with interest thereon" (*l*).

The Court will grant to the agent of a foreign Prince an administration limited to substantiate proceedings in Chancery (*m*). Object to substantiate proceedings.

(*e*) *Silver v. Stein*, 1 Drew. 295.

(*i*) *Howell v. Metcalfe*, 2 Add. 361 n. (*a*).

(*f*) *Fowler v. Bayldon*, 9 Hare, App. 78.

(*k*) *Elector of Hesse, In goods of*, 1 Hag. Ecc. R. 93.

(*g*) See *Rawlins v. McMahon*, 1 Drew. 225; *Grover v. Levi*, 9 Hare, App. 47; 16 Jur. 1061.

(*l*) *Dodgson, In goods of*, 1 Sw. & Tr. 259; 28 L. J., P. & M. 117.

(*h*) *Woolley v. Gordon*, 3 Phill. 315.

(*m*) *Elector of Hesse, In goods of*, 1 Hag. Ecc. R. 93.

To a particular
object.
Ad litem.

The grant of letters of administration *ad litem* makes the grantee complete representative of the estate to the extent of the authority which the letters purport to confer, and a decree against such grantee is therefore binding upon any one who may afterwards take out general administration to the estate (*o*).

An administration *ad litem* of a married woman does not sufficiently represent her separate estate to enable the Court to decide how far that estate is liable in respect of her acts as a trustee (*p*).

To whom.

The Court may in its discretion pass by the next of kin in appointing a guardian *ad litem* to an infant (*q*).

Guardians *ad
litem.*

The Court refused to appoint the paternal uncle guardian to a minor, for the purpose of instituting a suit on his behalf against the mother in reference to the validity of the will of his father, without first citing the mother to show cause why such an appointment should not be made (*r*).

*Ad colligenda
bona.*

Where there are no next of kin, creditors, or other person applicant for the administration, the Court has a discretionary power to grant *administration ad colligenda bona defuncti*, or the Court may take the matter in hand itself.

The above grant of administration is had recourse to by the Court generally where there is danger to the estate by reason of the same being of a perishable or precarious nature.

When a sole next of kin refuses to take administration, the Court, on cause shown, will decree letters *ad colligenda bona defuncti*, limited according to the special circumstances of the case (*s*).

(*o*) *Davis v. Chanter*, 2 Phillips, 545.

(*p*) *Shipton v. Rawlins*, 4 De G. & Sm. 477.

(*q*) *Quick v. Quick*, 33 L. J., P. & M. 177.

(*r*) *Jenkins, In goods of*, 1 L. R., Pro. 690; 38 L. J., P. & M. 72; 21 L. T., N. S. 300.

(*s*) *Radnall, In goods of*, 2 Add. 232.

The power of the Court seems in such cases to be limited to collecting the personal estate, giving discharges for debts on payment of the same, or renewing leases, which would expire before a general grant could be made.

To a particular object.
Ad colligenda.

There is no precedent in the Prerogative Court which would warrant the Court of Probate in giving an administrator *ad colligendum*, the power to dispose of the premises and goodwill of a business, nor indeed, has the Court power to sell any of the goods of the deceased: it cannot therefore delegate an authority for such a purpose to another (*t*).

When a loss to an estate was likely to occur if a grant of administration was delayed, the Court made a grant *ad colligenda bona* to a creditor, but directed that, after payment of necessary charges, the balance should be deposited in the registry until a general grant should issue (*u*).

A monition against an administrator *pendente lite*, will be granted at the end of the suit to compel him to transfer to the person entitled, everything in his possession acquired in that character (*x*).

Determination of limited grant.

Grants ceterorum.] See C. P. A. 1857, ss. 86 and 88, and C. P. A. 1858, s. 20.

Where the representation of a deceased is divided by excepting a previous portion out of the residue, the supplemental grant is called a grant *ceterorum*. As where administration *testamento annexo* of the will of a married woman made under a power, was granted, limited to the extent of that power, to the person appointed by the will: to the husband was decreed a general grant *ceterorum bonorum* (*y*). The cases previously discussed where the representation is divided in estate, as under head 1 (*i. e.*, *limited in estate*), or a particular function of the general

(*t*) *In the goods of Clarkington*, 2 Sw. & Tr. 381.

(*x*) *Graves, In goods of*, 1 Hag. Ecc. R. 313.

(*u*) *Stewart, In goods of*, 1 L. R., Pro. 727; 38 L. J., P. & M. 39; 20 L. T., N. S. 279.

(*y*) *Baxley v. French*, 2 Lee, 537.

Cæterorum.

representative is taken from him and conferred on another head 3 (*limited to particular purpose*), afford instances where the larger grant is a *cæterorum* grant.

Grant, save and except.

A grant "*save and except*" is the reverse of a *cæterorum* grant—it precedes instead of following the particular or limited grant, as in the case above cited, if the grant were made to the husband first, it would be a general grant of all his wife's goods and chattels, "*save and except*" such as she was entitled to dispose of, and had disposed of under the power. These grants (*cæterorum* and *save and except*) are therefore made under similar conditions, and general and limited grants may issue almost together. The oaths requisite will be found in the Appendix, Forms.

Supplemental or *cessate* grants.

Where, however, the cases discussed under the second head (where the representation is limited in point of *time*) occur, it is obvious that, as the whole representation is granted, although only for a time, no other grant can be made until such time has elapsed. For instance, a grant made *durante absentia* or *minoritate*, is a grant of the whole representation, expiring on the return or coming of age of the party entitled. Then and not till then can the party entitled apply for a general and regular grant. This is called a supplemental or *cessate* grant. Although the first grant would seem to be equally determinable by the happening of the particular event as by the death of the grantee, yet a distinction is taken between a supplemental or *cessate* grant and a grant *de bonis*; and rightly so, because in the latter case the grant was originally of the entire representation, the fee simple, as it were, of the representation; whereas in the former, the original grant was a kind of leasehold of, or determinable estate in, the representation, determining of itself on the effluxion of time or on the happening of a particular event. This distinction is not merely technical, for a *cessate* grant is a renewal of the entire original grant, while a grant *de bonis* is only a grant of so much as is unadministered, and an administrator taking the former is obliged to give

security to the same amount that the original administrator did in the first instance, although the estate may have been partly administered (z). Supplemental.

Though, where it appeared that the whole of the estate had been distributed with the exception of the legacy to the proposed administrator, the Court, under the 82nd section of the Probate and Administration Act, made the grant upon security being given to the amount of double the value of the property remaining unadministered (a).

Alteration in Grants.] See C. P. A. 1858, s. 17, 55 Geo. III. c. 184, s. 42. Rules 72, P. R., Non-C., and 63, D. R. •

By the 3rd and 4th sections of the C. P. A. 1857, the former testamentary jurisdiction of the Ecclesiastical Courts is abolished and transferred to the present, and with it the power which those Courts exercised of altering or amending the grants they had made. By the C. P. A. 1858, s. 17, the Judge of the Court of Probate is invested with the power of altering and amending grants made before January 11, 1858, *i. e.*, grants made by the extinct Courts. By Rule 72, P. R., Non-C., the Principal Registrars are directed to send a notice in the cases mentioned in the rule to the District Registrar. By Judge.

By the 63rd Rule, D. R., no grant of probate or letters of administration is to be altered by a District Registrar without an order of a Registrar of the Principal Registry previously obtained. In case the name of the testator or intestate requires alteration, the notice of application must be renewed, and an alteration ordered is not to be made by the District Registrar until the usual certificate on such notice has been received from the Principal Registry. By District Registrar.

Where probate of a will had been obtained by the universal legatee and sole executrix, on a false representation that she was a spinster, whereas she had a husband living, the Court refused to alter the probate without the

(z) *Abbott v. Abbott*, 2 Phill. 578. (a) *Fozard, In goods of*, 32 L. J., P. & M. 160.

Grant obtained by fraud. consent of the husband, the property not being bequeathed to the sole and separate use of the legatee (b).

In amount sworn under. Where the date of the death of the deceased is altered, a further affidavit is required from the executor or administrator for the Inland Revenue. It frequently happens that the amount of the deceased's estate is sworn at too low a figure, to remedy this the 55 Geo. III. c. 184 (sects. 41, 42, 43 and 44) was passed. By sect. 41, the representative of the deceased is entitled on making affidavit or declaration of the real amount, and on payment of the full duty (without any deduction for any previous duty paid), and of the penalty for stamping deeds after their execution to have the probate or letters of administration duly stamped. If, however, the erroneous amount is the result of a mistake without fraud, and the application is made within six months after the true value has been ascertained, the Commissioners are to remit the penalty and to allow for what duty has already been paid, and to stamp the probate or letters of administration on payment of the balance of stamp duty really due. In the case of administration on which too little stamp duty has been paid at first, the administrator, before he can get his letters of administration duly stamped for the real amount, has to give such security to the Court "as ought by law" to have been given on the granting thereof, in case the "full value of the estate and effects of the deceased had" been then ascertained" (c).

Revocation of Grants.] See C. P. A. 1857, ss. 59 (amended by C. P. A. 1858, s. 12), 76, 77 & 78; Rule P. R., Non-C. 72, D. R. 62.

When. There seems to be no limitation, either by statute or common law, of the time within which a grant may be revoked. Next of kin are not barred *by mere lapse of time* by acquiescence, or by the receipt of legacies, from

(b) *Hale, In goods of*, 5 No. of See, however, *Weir, In goods of*, 1 Ca. 513. Sw. & Tr. 506; and *Fozard, In*

(c) 55 Geo. III. c. 184, s. 42. *goods of*, 32 L. J., P. & M. 160.

requiring executors to prove a will in solemn form (*d*), “or otherwise to show cause why such probate should not be revoked,” as the decree runs. When.

Where an administration is granted on a false suggestion in fraud of the stamp duty, and of the fees of the office, it will be revoked, and the party falsely suggesting condemned in costs (*e*). Fraud.

Where two executors gave a letter of attorney to a third person to take administration *cum testamento annexo*, who thereupon took the grant, and one of them died, it was held that the survivor had a right to call in the letter of attorney, and to take probate of the will (*f*). Nominee dying.

Where a testamentary guardian to minor children had been appointed, and administration had, *per incuriam*, been granted to a guardian elected by the minors for their use and benefit, the Court revoked the grant, and granted administration to the testamentary guardian (*g*). Granted *per incuriam*.

By settlement (1794) on marriage, certain property was assigned to trustees in trust as to the income for the husband, for life, then for the wife for life, if she survived, remainder in trust to be divided among the children on their coming of age, according to appointment by surviving parent; the husband and two children survived the wife, and the latter attained the age of twenty-one: in 1809, the last of the trustees died, and his executors refused to take out probate in the province of Canterbury, as he had only this trust estate in that province, whereupon administration (with will and codicils annexed) limited to this trust estate was granted to the husband: on his consent and affidavit that he had not assigned his right, and on his assigning to his sons his interest under the trust, and executing a release of his power of appointment, the former administration was revoked, and administration similarly limited was granted to the sons (*h*). Administration (though good) revoked.

(*d*) *Merryweather v. Turner*, 3 Curt. 802.

(*g*) *Morris*, In goods of, 31 L. J., P. & M. 80.

(*e*) *Smith v. Corry*, 1 Lee, 418.

(*h*) *In goods of Ferrier*, 1 Hag.

(*f*) *Pipon v. Wallis*, 1 Lee, 402.

Ecc. R. 241.

See 55 Geo. III. c. 184, s. 38; 22 & 23 Vict. c. 36, s. 1; 27 & 28 Vict. c. 56, s. 4; 31 & 32 Vict. c. 124, s. 7.

Exemptions under 100l.] 27 & 28 Vict. c. 56, s. 5.

Seamen, Marines, or Soldiers.] 2 & 3 Vict. c. 37, s. 50.

Probate Duty.] By the law of England, if a married woman becomes entitled to the property of a deceased relative situated in England, and her husband takes no step to reduce her rights into possession, and she dies, and her husband does not take out administration to her, and he dies, the child of these married persons must take out two administrations, one to his father, the other to his mother, on each of which, as on a distinct devolution of property, duty is payable to the crown: if this child is domiciled in a foreign state, where his parents were also domiciled, and empowers a person in England to take out administration for him, the same course must, under the same circumstances, be pursued, even though the property, when obtained, is to be distributed in the foreign state, where the law might not require this double authority of administration.

Where such property, no next of kin appearing, had been taken possession of by the solicitor to the treasury, who had paid off all the debts of the intestate, and then paid over the balance to the crown, and, after some years, the claim of the next of kin was established, and the solicitor of the treasury ordered to pay over the principal amount, with interest, to the next of kin, the interest, as well as the principal, is chargeable with duty; the rule being that whatever is recoverable by virtue of the letters of administration is so chargeable, and the interest was so recoverable, being, in fact, part of the estate for which administration was granted (*i*).

Not restricted
to the oath of
applicant.

In granting probate or letters of administration, the Court is not restricted to the oath of the applicant as to the value of the property, but may receive the oath of any

(*i*) *Partington v. Att.-Gen.*, 4 L. R., H. L. Cas. 100; 38 L. J., Exch. 205; 21 L. T., N. S. 370.

competent person to that fact. Where, therefore, the property was sworn below its value by the executor who was abroad, the Court allowed a fresh affidavit, in which the true value of the property was stated, and the mistake in the executor's oath explained, to be sworn and filed by his agent in this country, and probate to go accordingly (*k*).

Probate duty is payable in respect of the purchase-money of real estate on a contract for its purchase, made before, but completed after, the death of the testator (*l*).

Where letters of administration were granted merely to enable a personal representative of a deceased to execute a formal release to the trustee under a marriage settlement, the Court allowed the property to be sworn under 20*l.* (*m*).

Succession.] See 16 & 17 Vict. c. 51.

The duties payable on legacies amounting to 20*l.* and upwards are—

To children or their descendants . . .	1 per cent.
Brother or sister or their descendants . . .	3 per cent.
Uncle or aunt or their descendants . . .	5 per cent.
Great uncle or aunt or their descendants . . .	6 per cent.
All other relations or strangers . . .	10 per cent.
Husband, wife, and the royal family are exempted.	

(*k*) *De Angulo y Urruela*, 38 L. H. of L. Ca. 243; 30 L. J., Ex. 379.
J., P. & M. 21. (*m*) *Stackpoole*, *In goods of*, 5
(*l*) *Att.-Gen. v. Brunning*, 8 L. T., N. S. 140, Prob.

PRACTICE AND PLEADING

IN

CONTENTIOUS BUSINESS.

Procedure.

THE practice of the Court of Probate shall, except where otherwise provided by this act, or by the rules or orders to be from time to time made under this act, be, so far as the circumstances of the case will admit, according to the present practice of the Prerogative Court (*a*).

This section relates to the *procedure* of the Court, not to the *principles* on which it is to act (*b*).

The rules for practice in the registry are not, under all circumstances, absolutely binding on the Court (*c*).

When contentious business commences.

Upon an appearance being entered in answer to the warning of a caveat, the matter shall be entered as a cause in the Court book, and the contentious business shall thereupon be held to commence, and the expenses of the entry of such caveat and the warning thereof shall, upon taxation, be considered as costs in the cause (*d*).

When a party proposes to prove a will or codicil in solemn form of law, and no caveat has been entered, or a caveat has been entered, and no appearance given to the warning thereof, the contentious business shall be held to commence with the extracting of a citation in the forms, Nos. 1 and 2, or in some similar form (*e*).

Parties.

As the parties to a cause must always be persons who

(*a*) C. P. Act, 1857, s. 29.

(*b*) *In goods of Thos. Hy. Oliphant*, deceased, 1 Sw. & Tr. 525.

(*c*) *In goods of Loftus*, 3 Sw. &

Tr. 307; 33 L. J., P. & M. 59.

(*d*) Rule 12, C. B.

(*e*) Rule 14, C. B.

are in some way interested in the result of the suit, it will be as well to consider how such interests arise. Although these interests may arise in various ways, they all, however, can be reduced to three heads:—

1. Those arising under some testamentary paper as executors, and the like.
2. Those arising from relationship to the deceased, as widow or next of kin, &c.
3. Those arising from operation of law, as creditors, heirs-at-law, &c.

Executors or *other parties* who, previous to the passing of the Court of Probate Act, 1857, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities and effect as heretofore (f).

“*Executors.*”] This includes any kind of executor, whether nominate, according to the tenor, delegate or substituted, in fact any person to whom simple *probate* can be granted.

[*Or other Parties.*] This refers to parties to whom, on failure of the executor to appear, or on his refusal to act after appearance, or on renunciation, the Court would grant administration with the will annexed, as residuary or other legatees (*g*), or their representatives legatees in trust (but not to their representatives) (*h*), or on their death, the *cestui que trusts*, and the like. It would seem that, on the failure of all other parties interested to propound a will, the widow or next of kin might propound it, as the Ordinary is directed by the words of the statute to grant administration to them, on the refusal of the executor (*i*).

Next of kin and others who, previously to the passing of the said act, had a right to put executors or parties entitled to administration with the will annexed, upon proof of a will in solemn form of law, shall continue to possess the

Who may put
executors, &c.
on proof.

(f) Rule 4, C. B.

(g) *Sutton v. Drax*, 2 Phill.

323; *Thorne v. Rooke*, 2 Curt. 799.

(h) *Hutchinson v. Lambert*, 3

Add. 27.

(i) 21 Hen. 8, c. 55.

Parties.

same rights and privileges, and be subject to the same liabilities with respect to costs, as heretofore (*j*).

Next of kin (which includes the widow) are entitled to put executors on proof of a will in solemn form, for the obvious reason that if the proof of the will fails, they become entitled in distribution.

A next of kin, however, *qua* next of kin, has no right to oppose a testamentary paper, without showing some interest, however small (*k*); as where a will disposes of the interest of the next of kin, he would have no interest to oppose a codicil merely, which did not affect him.

And others.] This refers to those persons who, without being next of kin, have interests which are affected by the will, as, for instance, the executor or legatee of a prior will or their representatives.

It does not include the executor himself after he has proved the will in common form; for an executor who has proved a will in common form cannot, as such executor, take proceedings to call in question the validity of that will; he has no right, therefore, to cite the persons interested under it to propound it in solemn form, or show cause why the probate in common form should not be revoked; the executor of an executor is in this respect in the same position as the original executor (*l*).

Intervener.

Parties who, previously to the passing of the said act, had a right to intervene in a cause, may do so, with leave of the Judge or one of the Registrars, obtained by order on summons, subject to the same limitations and the same rules with respect to costs as heretofore (*m*).

An "intervener" is a party who voluntarily interposes. A party who is brought into the contest by being cited is not strictly an intervener.

Any party whose interest is affected is entitled to oppose the grant of probate.

(*j*) Rule 5, C. B.

(*l*) *Chamberlain, In goods of*, 1

(*k*) *Bascomb v. Harrison*, 7 No.

L. R., Prob. 316.

of Ca. 275.

(*m*) Rule 6, C. B.

He must, however, have some interest (*n*); it may be very small, even the bare possibility of an interest is sufficient (*o*). Parties.

But a party who has no interest cannot be permitted to intervene in a cause (*p*).

Therefore, before a person is permitted to contest a will he may be called upon by the propounder to show his interest; but when two contest a will neither can call upon the other first to show his interest (*q*). Interest must be shown.

Where an administration has once been duly granted, the propounder of a will loses this right, for a party in possession of an administration is not bound to propound her interest till the party calling it in question has established her own (*r*).

Where the Court decided that a legatee in a separate paper was not executrix according to the tenor, it was held that she could not oppose the validity of a former will, if she was paid her costs, and if the executor of that will was ready to take probate of the paper by which she was benefited (*s*). Legatee in separate paper.

A creditor is not entitled to contest an administration already granted, though *primâ facie* fraudulently obtained (*t*). Creditor.

Nor can he oppose a grant of probate of a will to the executor according to the tenor (*u*).

Where the deceased left behind him three executed wills, each of which in fact revoked the previous one: the last will was propounded by the executors named in it against the next of kin; the executors of the first will

(*n*) *Wright v. Rutherford*, 2 Lee, 266.

(*o*) *Kipping & Barker v. Ash & others*, 1 Rob. 270; 4 No. of Ca. 177.

(*p*) *Brotherton v. Hellicr*, 1 Lee, 599.

(*q*) *Hingeston v. Tucker*, 31 L. J., P. & M. 91.

(*r*) *Hibben v. Calembourg*, 1 Phill. 166.

(*s*) *Hillam v. Walker*, 1 Hag. Ecc. R. 71.

(*t*) *Newsom, In goods of*, 2 No. of Ca. 15.

(*u*) *Menzies v. Pulbrook*, 1 No. of Ca. 132.

Parties.

obtained leave to intervene to propound their will and to plead, as regarded the last will, that it was not duly executed; that the deceased was not of testamentary capacity at the time he signed it, and that it was obtained by undue influence and fraud:—Held that the executors of the last will could not as such propound the second will as well as their own, merely to prove that it revoked the first will, and, therefore, deprived the executors of the first will of any interest in the estate of the deceased (*x*).

Evidence of relationship.

A deed executed by the deceased in favour of the defendant, in which the defendant was described as a sister of the deceased, was held to be sufficient evidence of relationship, so that the defendant as next of kin could contest the validity of the will of the deceased (*y*).

Where an executor having propounded a will, a party who appeared to dispute it, as the natural son of the deceased, was put upon proof of his interest: in his declaration he alleged that the deceased was a domiciled Portuguese; that he was his natural son; that by the law of Portugal he was entitled to the whole of the deceased's property, and that he had instituted a suit in Portugal against the executor, in which he obtained a decree that he should be put into possession of the property; the declaration did not state the nature of the suit, nor the questions involved in it, nor did the judgment show that the plaintiff was in the same position as a legitimate son:—Held that the foreign judgment alone did not show such an interest in the party in whose favour it was made as to entitle him to dispute the will (*z*).

An intervener may plead after issue joined by leave of the Court (*a*).

Not barred by lapse of time.

Where a party, sole next of kin of the deceased, after

(*x*) *Parton v. Johnson*, 37 L. J., P. & M. 67.

(*y*) *Smith v. Tebbitt*, 36 L. J., P. & M. 35.

(*z*) *Crispin v. Doglione*, 29 L. J., P. & M. 130.

(*a*) *Jones v. Williams & others*, 34 L. J., P. & M. 102.

a lapse of fourteen years from his death, and after the receipt of a legacy under the will, cited the executors to bring in probate of and prove the will:—Held that the party was not barred by lapse of time, or by the receipt of a legacy, though he was by admissions in Chancery (*b*). Parties.
Or receipt of legacy.

There is no limitation as to time in requiring a will to be proved in solemn form (*c*).

When the testament is to be proved in solemn form, it is requisite that such persons as have interest, that is to say, the widow and next of kin of the deceased, to whom the administration of his goods ought to be committed, if he had died intestate, are to be cited to be present at the probation and approbation of the testament, in whose presence the will is to be exhibited to the Judge (*d*). This is the groundwork of the present system; the practice of the present Probate Court being directed to be (except where otherwise specifically ordered) according to the practice of the Prerogative Court (*e*). Parties to be cited.
Widow and next of kin.

The executor should, therefore, cite the widow (if any) and the next of kin of the deceased.

The extinct Courts of Probate never pretended to have any jurisdiction over realty. But now under the operation of sects. 61, 62, 63 and 64 of the C. P. Act, 1857, “the heir-at-law, devisees and other persons having or pre- tending interest in the real estate affected by the will” are to be cited or summoned as though they were next of kin and the will affected personalty. They also may become parties or intervene for their respective interests (*f*). The penalty on this indulgence is that they are bound by the decree of the Court, whether for or against the will (*g*). The 63rd section provides that where a deceased had no real estate or power to appoint to real estate beneficially, Heir-at-law, devisees, &c.

(*b*) *Merryweather v. Turner*, 3 No. of Ca. 55.

(*c*) *Topping, In goods of*, 2 Robert. 620.

(*d*) Swinb. 448.

(*e*) C. P. A. 1857, s. 29.

(*f*) C. P. A. 1857, s. 61.

(*g*) C. P. A. 1857, s. 62.

Parties.

or where the will does not affect real estate, these persons need not be cited (*h*).

Heir-at-law,
&c.

The rule applicable to persons desirous of citing the heir-at-law or devisees in relation to a will affecting real estate is Rule 71, C. B.

Should one of the above parties not be cited, but be desirous of intervening to protect his interest, he then comes within the scope of Rule 6, C. B., and may obtain the leave of the Judge or one of the Registrars by order on summons as there directed.

But execution of a will affecting realty cannot be prevented from obtaining probate in common form by a caveat entered by the heir-at-law if he has not been cited, and if the heir-at-law enters such a caveat it is not necessary for the executors to deliver a declaration, and if they do so, and the heir-at-law does not plead to it, he will not be condemned in the costs incurred in delivering it (*i*); such a caveat in fact seems a mere nullity.

The object of these enactments was to prevent the possibility of a double trial on the same will (*k*).

When to be
cited.

"The Court is authorized to cite the heir-at-law in two events only; one being where the validity of the will is actually in contest; the other being where the will, although not in contest, is about to be proved in solemn form by the person who brings it before the Court" (*l*).—Sir J. P. Wilde. Therefore the Court will not authorize the citation of the heir-at-law under C. P. A. 1857, s. 61, until a plea has been filed in the suit, or until the next of kin has been already cited to see proceedings (*m*).

So where a testamentary suit was commenced by caveat, and after warning of the caveat and entry of appearance by the next of kin the executrix under an alleged

(*h*) C. P. A. 1857, s. 63.(*l*) *Moore & another v. Holgate*(*i*) *Young v. Ferrie*, 29 L. J.,
P. & M. 69.& wife, 1 L. R., Pro. 101; 35 L. J.,
P. & M. 46.(*k*) *Nicholls v. Binns*, 1 Sw. &
Tr. 19.(*m*) *Ibid*.

will filed a declaration propounding the will; it was held that leave to cite the heir-at-law of the testator under sect. 61 could not be granted until a plea had been filed denying the validity of the will (*n*). Parties.
Heir-at-law.

But if the party propounding the will will file an affidavit (even before the time for pleading has expired) that he intends to go on and prove the will in solemn form, the Courts will allow the citation to issue (*o*).

Where there was no question as to the validity of the will, the citation to the heir-at-law was only allowed to issue upon the statement in Court by counsel that the plaintiff was going to prove the will in solemn form (*p*). In what cases
to be cited.

Conversely, where the executors under the will of a deceased cited the executors named in a codicil to it, as also the other parties interested to propound such codicil, and an appearance had been entered for the executors named in the codicil, but no declaration had been filed, and the bequests in the codicil affected the real estate, the Court ordered the heir-at-law to be cited (*q*).

Again, where executors propounded a will in solemn form, it was held they might obtain the leave of the Court to cite the heir-at-law to see proceedings under the Court of Probate Act, 1857, s. 61, although no plea is filed, and the validity of the will is not in dispute (*r*).

So, in a cause transferred from the Prerogative Court of Canterbury to the Court of Probate, before any allegation or declaration given in, it was held the provisions of the 61st and following sections applied, and that the fact that one co-heir being an infant and child of a plaintiff, was no ground for the Court refusing to allow such co-heir to be cited (*s*).

(*n*) *Coplestone & wife v. Nicholes*, 38 L. J., P. & M. 57. (*q*) *Corner v. Parnell & others*, 36 L. J., P. & M. 81.

(*o*) *Peacock v. Lowe*, 1 L. R., Pro. 311; 36 L. J., P. & M. 46. (*r*) *Domville v. Domville*, 34 L. J., P. & M. 79; 4 Sw. & Tr. 17.

(*p*) *Baldwin v. Durrant*, quoted in *Peacock v. Lowe*, *supra*. (*s*) *Nicholls & Freeman v. Binns*, 1 Sw. & Tr. 19; 27 L. J., P. & M. 14.

Parties. Although already before the Court as a defendant in
 Heir-at-law. another character, the Court will still direct a citation to
 issue against the heir-at-law (*t*).

And where a party to a suit is before the Court as next
 of kin or legatee, being also heir-at-law or devisee under
 the same will, it is still necessary to cite him to see pro-
 ceedings under the 61st section as heir-at-law, or de-
 visee (*u*).

Not to be When a contention arises about a testamentary paper of
 found. a deceased, and his heir-at-law is either not within the
 jurisdiction of the Court, or has no known place of abode,
 the Court may still order him to be cited, but will not
 decide that any particular form of service of the citation
 shall bind him (*x*).

When he must Upon a motion for the appointment of a receiver under
 be cited. Court of Probate Act, 1857, s. 71, it must appear upon
 affidavit that the heir-at-law has been cited (*y*).

Devises. Executors propounding a will, disposing of real estate,
 may issue citation to see proceedings against devisees
 under a prior will, which is not propounded (*z*).

Queen's In a cause of proving in solemn form, the will of a
 proctor. spinster, a bastard, which affected real estate, the Court
 authorized the executor under Rule 34, C. B. (of the old
 rules, which is now represented by Rule 78, C. B.) to cite
 the Queen's proctor to see proceedings (*a*).

All persons A next of kin contesting a will, propounded by an exe-
 interested. cutor, may take out a decree citing all persons interested
 under the papers, either as legatees or otherwise, to see
 proceedings (*b*).

Legatees. On the death of the deceased, probate of his will was
 granted in common form to the sole executor named in it,

- (*t*) *Lister v. Smith*, 3 Sw. & Tr. P. & M. 73.
 53; 32 L. J., P. & M. 13. (*z*) *Lister v. Smith*, 32 L. J., P.
 (*u*) *Emberley v. Trevanion*, 22 & M. 13; 3 Sw. & Tr. 53.
 L. J., P. & M. 142. (*a*) *Wyman v. Ashwell*, 29 L. J.,
 (*x*) *Martin v. Harding*, 11 Jnr., P. & M. 94; 4 Sw. & Tr. 196.
 N. S. 118. (*b*) *Colvin v. Fraser*, 1 Hag.
 (*y*) *Purdey v. Field*, 33 L. J., Ecc. R. 107.

and he intermeddled in the estate: he afterwards died, and probate of his will was also granted to the executor therein named: this last executor also intermeddled in the estate of his testator:—Held that the executor's executor had no interest to cite the legatees under the first will to propound the same, or show cause why the probate of that will should not be revoked, and the will itself should not be declared null and void (c). Parties.
Who to be cited.

A creditor is not to be cited, as he cannot controvert the validity of a will, for it is indifferent whether he receive his debt from an executor or an administrator (d). Creditor not to be cited.

But if he has already had a grant of administration it is otherwise, as in that case he is the same for the purpose of opposing the will as a next of kin (e). Aliter if he have a grant.

And where the plaintiffs propounded the will and codicil of Ann Wilson, under the latter of which, her husband, who had survived her but a short time, took an interest, the Court allowed a citation to issue to the official liquidators of the East of England Bank, creditors of the husband, to see the will proved (f).

A married woman, it seems, may be a party, even in opposition to her husband. Where a husband, having entered a caveat against the issuing of probate or administration of the will of a deceased person, in which his wife was named executrix, the Court refused him liberty to allege, as he had not sufficient *primâ facie* interest in the assets of the deceased to oppose the will (g). Married woman.

Where a married woman propounds a paper the husband must join in the proxy (h).

Where a wife refused to take administration to which she was entitled, and, being cited by her husband (who

(c) *Chamberlain, In goods of*, 3 Sw. & Tr. 572.
36 L. J., P. & M. 52. (g) *Preston v. Preston*, Milw.
(d) *Burroughs v. Griffiths &* Ir. Ecc. Rep. 608.
Hall, 1 Lee, 544. (h) *Arbery v. Ashe*, 1 Hag. Ecc.
(e) 1 Phill. 160, 161, note. R. 219.
(f) *Diwon v. Allenson & wife*,

Parties. had a beneficial interest in the property) to accept or refuse or show cause, &c. did not appear, the administration was decreed to her husband (*i*).

Wife. But where he has an interest, the husband may (and indeed should) join with the wife in a suit as a party. As where there was a suit for a legacy to a wife brought by the husband and wife, an appearance was given under protest, it was argued that two plaintiffs ought not to be joined in the same process, but the Court, in overruling the protest, said, "the interest is in the husband, he may give a discharge for the legacy, they may sue as *conjuncta persona*" (*k*).

Minors. A minor may elect a guardian for the purpose of carrying on, defending or intervening in a suit, in the same manner and subject to the same rules as in respect of non-contentious business, and without having such guardian assigned to him; but guardians are to be assigned to infants (under the age of seven years) for the above purposes by the Judge, or by an order of one of the Registrars founded on an affidavit to the effect required for such assignment in non-contentious business (*l*). A *minor* is a person from seven years old till the age of twenty-one. An *infant* is a person under the age of seven years (*m*).

Infants.

The difference, therefore, is that a minor chooses his guardian, while an infant has his guardian chosen for him by the Court.

In the same manner the minor has to sign and seal an election paper, a form of which is given in the Appendix; the paper also contains an appointment of the proctor or attorney who acts for the minor, and whose duty it is to file the election paper in the registry, which should be done forthwith. The election paper must be witnessed

(*i*) *Wenham v. Wenham*, 6 No. of Ca. 17.

(*l*) Rule 74, C. B.

(*k*) Case cited in *Fell v. Law*, 1 Robert. 738.

(*m*) *Oughton*, tit. 211, No. 1,

n. (*b*).

by one witness at least, who must be quite exempt from any interest in the litigation going on. *Semble*, that a solicitor cannot accept service of citations for infants (*n*).

But the Court is not bound by the election of the minor, especially where he is not in a position to act independently. The Court refused to appoint the paternal uncle guardian to a minor, for the purpose of instituting a suit on his behalf against the mother, in reference to the validity of the will of the minor's father, without first citing the mother to show cause why such an appointment should not be made (*o*). In this case it seems that the paternal uncle had not been elected, but it was suggested that as the minor was living with his mother, he was not in a position to elect an independent guardian. From the above it would seem that if the mother failed to show sufficient cause, the Court would appoint the paternal uncle, though not elected by the minor.

If, however, the party be an infant (*i. e.*, under seven years of age), the guardian is no longer the choice of the party, but the selection of the Court. Guardians are assigned to infants for the above purposes, *i. e.*, carrying on, defending, or intervening in a suit, by the Judge or by an order of one of the Registrars, founded on an affidavit to the effect required for such assignment in non-contentious business (*p*).

This affidavit must show that the proposed guardian is either *de facto* next of kin of the infants, or that their next of kin *de facto* has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship (*q*).

But the Court is not bound to appoint the next of kin as guardian, although it requires this affidavit; for in

(*n*) *Ryves v. Ryves*, 30 L. J., Pro. 690; 38 L. J., P. & M. 72.
P. M. & A. 144.

(*p*) Rule 74, C. B.

(*o*) *Jenkins, In goods of*, 1 L. R., (*q*) Rule 35, P. R., Non-C.

Parties. appointing a guardian *ad litem* to an infant, the Court, if it thinks fit, may pass over the next of kin (*r*).

Lunatics. A lunatic is a party to a suit by his committee. The Court will not, when a competent party is opposing a will, stay the admission of the executor's allegation propounding the will, till the appointment of a committee of a lunatic next of kin be confirmed, more especially such committee being already a party to the suit as curator of other next of kin (*s*).

A committee of a lunatic is competent to institute a suit of divorce, by reason of the adultery of the wife, on behalf of the lunatic (*t*).

It would seem, therefore, to follow necessarily, that he would be competent to become a party to a suit on behalf of the lunatic in the Probate Court. It has, however, been held, that a suit for dissolution of marriage cannot be maintained against a lunatic (*u*). These decisions seem to have been founded on the criminal nature of such a suit, and are perhaps not applicable to suits in the Court of Probate.

*Formâ
pauperis.*

A plaintiff, who, through poverty, is unable to prosecute a suit instituted by him, should apply for leave to continue the suit *in formâ pauperis*. If he does not and the suit is dismissed for non-prosecution, he will not afterwards be allowed to re-commence it *in formâ pauperis* (*x*).

Under the procedure of the extinct courts, a pauper might commence a suit *in formâ pauperis* (*y*).

A person suing *in formâ pauperis*, who has had counsel assigned to him by the Court, cannot appear by another counsel (*z*).

(*r*) *Quick v. Quicke*, 10 Jur., N. S. 372; 33 L. J., P. & M. 177.

(*s*) *Tyrell v. Jenner*, 2 Hag. Ecc. R. 72.

(*t*) *Parnell v. Parnell*, 2 Hag. C. C. 169; 2 Phill. 158; and *Woodgate v. Taylor*, 30 L. J., P. & M. 197.

(*u*) *Bawden v. Bawden*, 31 L. J., P. & M. 94; *Mordaunt v. Mordaunt & others*, 39 L. J., P. & M. 57.

(*x*) *Cathrell v. Jeffree*, 33 L. J., P. & M. 178.

(*y*) *Re Jones*, 1 Hag. Ecc. R. 81.

(*z*) *Hamer v. Boreham*, 27 L. J., P. & M. 107.

Should the opposite party object to a party being allowed to appear *in formâ pauperis*, it is conceived that now the proper course would be to take out a summons calling on him to show cause why he should not be depauperized. Formerly such an objection was raised by act on petition, and the pleadings may be seen in *Lovekin v. Edwards* (a), but probably the more simple course by summons would now be adopted.

Partics.
*Formâ pau-
peris.*

In one case a party having been admitted to sue as a pauper was, on facts respecting an income, proved against him by the proctor assigned to him, dispaupered (b).

Finally, it must be remembered that the characters of plaintiff and defendant sometimes appear confused in the Probate Court to practitioners who are only accustomed to the Common Law Courts. This arises from the conflict of two axioms in the Probate Court; the one being, that a testamentary paper must always be propounded in a declaration, the other being, the rule which is common to all Courts, that the complaining party is, as his name imports, the plaintiff. This is not without parallel in the Common Law Courts, as in the ancient actions of replevin, where the parties change their position in pleading. Thus, in probate proceedings, if a party complain that a grant of probate has improperly been obtained, he cites the executor to bring in the probate, and so becomes a plaintiff. The executor, on the other hand, having brought in the probate and appeared to the citation, propounds in a *declaration*, although he be defendant, the impugned will, in answer to which the plaintiff delivers his plea, and so the pleadings continue, the characters of the parties appearing reversed.

Plaintiff and
defendant.

Causes in the Court of Probate commence in two ways, either by caveat or citation. And we will consider the former first, as it is prior in point of time, being a proceeding anticipatory of the issuing of any grant.

Commence-
ment of cause.

(a) 1 Phill. 183.

(b) *Lait v. Bailey*, 2 Robert.
150.

Caveat.] It is not, however, necessarily a part of contentious proceedings itself, but it may subsequently become so, at least so far as the important consideration of costs is concerned. In one sense every contentious proceeding commences by caveat, because whenever a citation is issued it is directed that before it is signed by a Registrar a caveat shall be entered against any grant being made in respect of the estate and effects of the deceased to which such citation relates (*c*).

By whom and
where entered.

Where a grant of probate or letters of administration has not yet issued, any person intending to oppose such issuing, does so by entering a caveat. He can do this in person, or by his proctor, solicitor or attorney, and he can enter it either in the Principal Registry, or in a District Registry (*d*). If the caveat be entered in the Principal Registry, the persons entering it must also insert the name of the deceased in the index to the caveat book (*e*).

What for.

A caveat, however, need not be entered merely for the purpose of disputing a will. It may be entered for the purposes of protecting it (*f*), as the caveator, being entitled to notice or "warning" before a grant can issue, has thus the opportunity of entering an appearance, and may thereupon *oppose* or *support* the grant as his interest may dictate.

Caveats against the grants of probates or administrations may be lodged in the Principal Registry, or in any District Registry, and (subject to any rules or orders under this act) the practice and procedure under such caveats in the Court of Probate shall, as near as may be, correspond with the practice and procedure under caveats, now in use in the Prerogative Court of Canterbury; and immediately on a caveat being lodged in any District Registry, the district Registrar shall send a copy thereof to the

(*c*) Rule 66, P. R., Non-C.

(*e*) Rule 59, P. R., Non-C.

(*d*) Rule 59, P. R., Non-C.; Rule
7, C. B.; Rule 72, D. R.

(*f*) *Ingram v. Strong*, 2 Phill.
315.

Registrars to be entered among the caveats in the Principal Registry; and immediately on a caveat being entered in the Principal Registry, notice thereof shall be given to the district Registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other district Registrar to whom it may appear to the Registrar of the Principal Registry expedient to transmit the same (g).

The rules applying to caveats are from 59 to 67, P. R., Rules. Non-C.; 72 to 78, D. R.; and 7 to 12 of the Con. B.

Its form is given Form 32, P. R., Non-C., and Form 31, D. R., a slight distinction is observable in these forms. The form prescribed for the District Registry states that the deceased had at the time of his death a fixed place of abode at some place within the district of ; this is for the purpose, no doubt, of enabling the District Registrar to comply with Rule 74, D. R., and send off at once to the registry of the district mentioned a copy of the caveat.

It will be seen that this rule is an improvement on the section of the statute above set out, for, whereas the statute directs that immediately on a caveat being entered in the Principal Registry, notice is to be sent to the Registrar of the district where the deceased at his death resided, which, in case the caveat were originally entered in a District Registry, and from thence entered in the Principal Registry, would be a roundabout way of sending notice; the rule provides that the district Registrar himself shall send the notice at once, thus saving at least one day's delay.

On referring to the forms it will be seen (Appendix, Form of. Forms No. 32, P. R., Non-C., and No. 31, D. R.) that the caveat is a notice to the officers of the registry, requiring them to let nothing be done (*i. e.*, let no grant go) in the goods of the deceased, describing his late place of residence, and giving the date and place of his death, un-

(g) C. P. A. 1857, s. 53.

Caveat. known to the party entering the caveat (called the *caveator*), or to his proctor, solicitor or attorney, and describing him as "having interest." The date follows, and that must be the day on which the caveat is actually entered and is of some importance, as it does not operate on the day on which it is actually entered in the Principal Registry (*h*);

Date. or, if entered in a District Registry on the day on which notice of its entry is received in the Principal Registry (*i*). From this date also is computed the period of six months, at the end of which time the caveat expires, though it may be renewed (*k*) from time to time.

Commencement and duration of.

The address also of the party entering the caveat is essential, as it is at this place that the warning is served, by leaving the same or a true copy there (*l*) or by sending it there by post (*m*).

Caveat books. Books called the "caveat books" are kept by the clerks of the seats in the Principal Registry, and by a similar official in the District Registries. They contain printed forms of caveats. [*Fill up the form in the caveat book containing the initial letter of the name of the deceased with the name of the deceased, his last place of abode, the day of his death, and your name and address, together with the date on which you are actually entering it, and sign it, giving again your address.*] If it is in the Principal Registry, write the name of the deceased in the index to the caveat book, and pay a fee stamp of 1s. If the deceased died in a *Probate Court district* and you are entering the caveat in the Principal Registry, two further stamps of 1s. each are required, one to be affixed to a printed notice sent to the Registrar of the district, and the other transmitted to him in respect of entering it.

Practical directions for entering.

On entering the caveat the officer will give you a receipt, which you must be careful to preserve, as if you

(*h*) Rule 62, P. R., Non-C.

73, D. R.

(*i*) Rule 75, D. R.

(*l*) Rule 9, C. B.

(*k*) Rule 60, P. R., Non-C.; Rule

(*m*) Rule 10, C. B.

afterwards wish to *subduct*, *i. e.*, withdraw your caveat, Caveat.
you must produce this receipt.

The effect of the entry of the caveat is to stop all proceedings for the purpose of obtaining a grant of probate or administration, in respect of the goods of the deceased named in the caveat; this continues until the caveat expires by lapse of time, or is what is called *warned*; and a party desirous of obtaining a grant of probate or administration of the goods of the deceased, must procure the Registrar to issue his warning. Effect of.

The bare possibility of an interest is sufficient to entitle a party to oppose a testamentary paper (*m*). Who may enter.

But a caveat entered by a person whose interest is unaffected, is a mere nullity, and as such may be disregarded; for, where an heir-at-law had not been cited by the executors of a will affecting realty, it was held that they could not be prevented from obtaining probate in common form by a caveat entered by him (*n*); nor, when he appeared to the warning of his caveat, was it necessary for them to deliver a declaration (*o*). By person without interest.

Nor will the mere entry of a caveat, found the jurisdiction of the Court (*p*). Mere entry.

Nor where a sentence of the Prerogative Court had been affirmed by the Court of Delegates and remitted; the Court would not allow the execution of the sentence to be delayed by the entry of a caveat after a considerable lapse of time (*q*).

A caveat is in force for six months from the day on which it bears date; it may, however, be renewed from time to time (*r*). How long in force.

Where an administration, with a will annexed, had been obtained, after a caveat had expired, but without After expiration of caveat.

(*m*) *Kipping v. Ash*, 1 Robert. 270.

(*p*) *France v. Aubrey*, 2 Lee, 534.

(*n*) *Young & another v. Ferrie & others*, 29 L. J., P. & M. 69.

(*q*) *Dew v. Clark & Clark*, 1 Hag. Ecc. R. 311.

(*o*) *Ibid.*

(*r*) Rule 8, C. B.

Caveat. notices to the adverse party, and while the will was in suit in Ireland, the *forum domicilii*, it was revoked, as having been surreptitiously obtained; and the party condemned in the costs of a petition against the order to bring in the grant (*s*).

Directions for warning. It was mentioned that when a caveat was entered, the party entering it in the Principal Registry inserted the name of the deceased in the caveat book; when the caveat is entered in the country this is done by the officers of the Principal Registry on receipt of the copy caveat, forwarded to them from the District Registrar under Rule 74, D. R.

Before issuing a grant of probate or administration, this book, which is kept by the clerks of the Seat, is searched, and upon the entry of a caveat being discovered, the grant to the applicant is stopped; a form of warning is then furnished by the clerk to the applicant, who fills it up according to his case and hands it back to the clerk. It is then sent by the clerk to the Registrar, and by him signed and served as hereinafter mentioned.

Warning—what is. On reference to the form of this “warning” the correctness of the term and the nature of it will be seen. It is a notice given by the Registrar of the Principal Registry to the caveator or his proctor, solicitor or attorney, according to the caveat, “warning” him within six days after the service of the warning (inclusive of the day of the service) to enter an appearance, or to cause an appearance to be entered for him, in the Principal Registry, to the caveat which he had previously entered, and to set forth his interest, concluding with a notice that in default of his doing so, the Court will proceed to do all such acts, matters and things as shall be necessary.

Form of warning. At the foot is a statement showing at whose instance the warning is issued from the registry, and what his interest is, and if under a will or codicil, giving the date

(*s*) *Lord Trimlestown v. Lady Trimlestown*, 3 Hag. Ecc. R. 243.

thereof, and also giving an address within three miles of the General Post Office, where notices, &c. may be served. Caveat.

Where the deceased, under the powers given to her by her marriage settlement, executed a will; subsequently the marriage was dissolved by the Court for Divorce, and the will itself was destroyed by burning: administration having been taken by her next of kin, was called in by the residuary legatee named in the will, who propounded the same, and the next of kin made no defence: a caveat had been entered by the person interested under the settlement, in case the deceased had not duly executed a will, but such caveat was not warned by the party propounding the will: the Court directed that the caveat should be warned, in order that the party who had entered it might, if he thought proper, intervene in the suit (*t*). Effect of not warning.

With the serving of the warning, sent by post by the Registrar under Rule 64, P. R., Non-C., and Rule 10, C. B., the party or his solicitor have nothing to do; it is done from the Principal Registry by leaving the same, or a true copy thereof, at the place mentioned in the caveat as the address of the person who entered it (*u*). Warning—served by whom.

It is, however, sufficient for the warning of a caveat that a Registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it (*x*). How.

In this, as in all other cases in the Probate Court, the period of six days is not reckoned as in the Common Law Courts. Sundays, Christmas and Good Friday are in the former entirely excluded for all purposes (*y*). As the warning is usually sent by post, the time from which the six days is computed is the *service*. The six days is, therefore, computed from the day on which the post would ordinarily arrive at the caveator's address. Appearance to warning.

(*t*) *Irving v. Irving*, 36 L. J., P. & M. 5. (*x*) Rule 10, C. B.; Rule 64, P. R., Non-C.

(*u*) Rule 9, C. B.; Rule 63, P. R., Non-C. (*y*) Rule 87, P. R., Non-C.

Caveat.

Appearance to
warning.

Where.

Moreover, although the six days have elapsed, an appearance may be entered at any time after, provided the grant has not been actually sealed.

The appearance must be entered in the Principal Registry (z).

As the procedure in entering appearances is the same, whether it be an appearance to a warning or a citation for practical directions, see *post*, "Appearance."

Citation.] The rules affecting citations are Rules 68, 69 and 70, P. R., Non-C., and Rules 13 to 22, C. B., both inclusive.

As citations are only extracted from the Principal Registry (a), there is, of course, no reference to them in the District rules, beyond the Rule 79, D. R., which instructs the District Registrar as to that fact, and Rule 80, D. R., which forbids the issue of a grant from a District Registry after a citation, without the production of an office copy of the decree or order of the Judge, or of one of the Registrars of the Principal Registry, authorizing the same.

What is.

A citation is in general a command issued from the Principal Registry, for the most part ordering the party, to whom it issues and on whom it is served, to do some particular act. Sometimes the order is to enter an appearance in the Registry; sometimes to bring in a probate or administration, which is said to have been granted improperly; sometimes merely to see proceedings, that is, to become a party to a suit, in case the party on whom the citation is served thinks it to his interest (see Forms 1, 2, 3, 4), and various other forms according to the circumstances of the case. It is sometimes no more in effect than a mere notice.

The order must be in the alternative, viz., to do the act ordered, or to show cause why he should not obey. If it leaves no option to the party cited but obedience to its requisitions, it is said to be a nullity (b). The command

(z) Rule 26, C. B.

(a) Rule 13, C. B.

(b) *Ackerley v. Parkinson*, 3 M. & S. 411.

to bring in a probate certainly leaves no option literally. Citation. The probate must be brought in to the Principal Registry, but as the object is to bring in the probate, in order that it may be annulled, the party cited has an opportunity (if he thinks fit) of showing cause why the probate, when so brought, should not be revoked, so that this still seems substantially to fall within the rule laid down in *Acherley v. Parkinson*.

Citations are of various kinds, not always necessarily initiating contentious proceedings, as the citee may obey the citation; for instance, where an executor is cited to take probate of an additional codicil, if he obeys and takes the probate, as cited, there is an end of all proceedings; indeed a citation to see a will proved seems to be the only one that necessarily leads to contentious proceedings. Various kinds of.

The forms give four kinds of citations. 1st. To see a will proved. 2nd. To bring in probate. 3rd. To bring in administration. 4th. To see proceedings; and these serve for models for the numerous kinds, such as to accept or refuse grants, to take out probate, where a party has intermeddled, and the like.

The citation is not quite analogous to a citation in divorce or a summons at common law. It contains always a recital that certain facts on which it is grounded appear by affidavit. From this it appears that the facts on which the citation issues must be first verified by affidavit, and so we shall find from the 13th Rule, C. B., that no citation is to issue under seal until an affidavit in verification of the averments it contains has been filed in the Registry. This is called the affidavit to lead the citation (see Form). What is.

It will be seen on reference to the forms of citations that each one recites the filing of this affidavit. It must, therefore, show all the facts which are requisite preliminaries to the issuing of the citation. These of course will vary according to each case, but their nature sufficiently appears from the recitals in the Forms 1, 2, 3 and 4 of citations given. Affidavit to lead citation.

Citation.
Affidavit
to lead.

" Citations issued by this Court are not like writs at common law, at the service of any one who likes to ask for them. It is an inherent part of the practice of this Court that every one before extracting a citation should show in the affidavit which leads the citation the character in which he does it, and thereby the interest which justifies it " (c).—Sir J. P. Wilde.

Hence it appears that the citation must show as well the interest of the citor as that of the citee.

By whom
affidavit made.

The Court allowed a citation to executors to bring in the probate, to issue on the affidavit of the agent of the party citant (the next of kin) who was in Australia, the property being distributed by the Court of Chancery in due course of administration, which could not be stayed until proceedings were instituted in the Court of Probate for revocation of the probate, and the agent of the party citant being in a position to make the necessary averments to lead the citation (d).

Citation to
prove will.

Every party interested under a will or affected by it has a right to have such will proved in solemn form, and in such a case the course is to cite the executor. If the executor fail to appear, the residuary or other legatee may propound the will *in loco executoris*, and a mere possibility of interest is sufficient (e).

To bring in
grant.

Again, if a grant in common form has issued either of probate or administration, the only way to set it aside is to issue a citation to bring in probate or letters of administration.

From the preceding it will be seen that citations are of an infinite variety, adapted to the necessities of each case, and all resulting from the principle that every person who has an interest in a grant, whether of probate or administration, has a right to call on every party whose right to the grant precedes his own, to exercise that right, and in

(c) *Chamberlaine, In goods of*, P. & M. 27; 1 L. R., Pro. 596.
36 L. J., P. & M. 53. (e) *Kipping v. Ash*, 1 Robert.
(d) *Hutley, In goods of*, 38 L. J., 270.

the event of the citation being unheeded, the right as it Citation.
were passes on to the party citing.

This right is the origin of citations to accept or refuse Against whom.
grants, and may be issued *against* executors or residuary
legatees under a will or against the widow, next of kin, or
parties entitled in distribution; where there is no will they
may be issued *by* legatees or creditors, or the representa- By whom.
tives or nominees of creditors, in fact, by any person whose
right is or may be affected by the grant.

Again, if an executor intermeddle with the goods of the Executor
deceased, he may be cited and compelled to take out a grant intermeddling
of probate; in which case the citation is "to bring in the
will, and accept probate thereof."

Sometimes an executor distrusts a portion of the testa-
mentary papers, and issues a citation calling on the parties
interested under the doubtful documents either to pro-
pound them, or to show cause why probate should not be
granted to the executors of the undoubted documents only.
For instance, by an executor against a legatee under
a codicil, calling on him to show cause why probate
should not be granted to the executor of the will alone;
or where the executor wishes, as it were, to take the opinion
of the court and propound a document for the purpose of
having it rejected; he should in such a case cite the per-
sons who are interested under the document; or even where
a will has been altered after execution, the executor should
cite the parties interested under the alterations to show
cause why probate should not be granted without them.
Sometimes a document exists whose validity it is re-
quisite to settle; a citation was issued by the executors
(who had already proved) of a will dated 1825, calling on
the executrix named in a will dated in 1826, to bring in
and propound the same, or to show cause why the pro-
bate already granted should not be confirmed (*f*).

Again, where a grant in common form has already
gone, and it is intended to revoke it, the course is for the

(*f*) *Maule v. Young & another*, March, 1827.

Citation.

party impugning the grant to issue a citation calling on the grantee to bring in the grant, and show cause why it should not be revoked.

The præcipe.

The præcipe.] The forms give a form of præcipe, which is a document similar in its nature and purpose to a præcipe at Common Law or in the Divorce Court. The form given in the authorized forms is in practice objected to in the registry, and, in fact, it is necessary to state in the præcipe the interest of both parties, viz., the party issuing the citation and the party cited.

Practical
directions for
issuing cita-
tion.

Draw up your præcipe on a half sheet of foolscap, according to the Form No. 5, stating also the interest of your client and of the party to be cited as executor, next of kin, or the like ; a form of præcipe may be obtained from a law stationer.

Obtain, also, from any law stationer a printed (on parchment) form of citation (if of any ordinary form), which fill up according to your case, prepare the affidavit to lead the citation, verifying the statements in the citation, and swear your client (or other the party deposing) to it. Take the præcipe, the form of citation so filled up, and the affidavit to the Registry, and hand it to the clerk of the papers. Apply shortly after to the sealer ; from him you will receive it. It will be noted "caveat entered" (see Rule 68, P. R., Non-C.) by the clerk of the papers, signed by the Registrar, and sealed by the sealer. If the citation alludes to any document not already in the Registry, as a will, a renunciation or any kind of paper whatever in the power of the citor, that paper must be brought in with the citation and deposited with the clerk of the papers. If the citation be not of quite an ordinary form, the practice is to draw it in draft, and bring it to the Registrar, who will settle it.

Service dis-
pensing.

The Court of Probate has no power to dispense with service of citations. Under the former rules leave to proceed to prove a will in solemn form would not be granted, unless citations had been personally served on the persons

entitled to see proceedings, or if personal service was impracticable, had been duly advertised (*g*). Citation—service of.

Citations are to be served personally when that can be done, the party cited being resident in Great Britain or Ireland. Citee resident in Great Britain or Ireland.

Personal service shall be effected (as at Common law) by leaving a true copy of the citation with the party cited, and showing such party the original, if required by him so to do (*h*). Personal service.

When personal service cannot be effected, the party citing must apply to the Judge or (in the vacation or absence of the Judge) to a Registrar, to direct the mode of service of the citation (*i*). When personal service impossible.

If the party to be cited be resident out of Great Britain and Ireland, the service is, in general, no longer personal, but is effected by the insertion of the citation (or of an abstract thereof settled and signed by one of the Registrars) as an advertisement in such of the morning and evening London newspapers, and, if necessary, in such local newspapers, and at such intervals, as the Judge or a Registrar may direct. Provided that in any case the Judge or a Registrar may direct a citation to be served personally (*j*). Citee resident out of Great Britain or Ireland.

From these two rules (18 & 19, C. B. 1862) it appears that citations may be served personally beyond the jurisdiction of the Court. The Divorce Court is expressly empowered to serve its petitions, either within or without her Majesty's dominions (*k*). This enactment was necessary in the Divorce Court, as the whole of its jurisdiction in matters of dissolution of marriage was entirely novel. Such an enactment, however, is omitted in the Probate Act, probably by design; as by the practice of the Prerogative Court (whose powers are now deputed to the Pro-

(*g*) *Potts v. Potts*, 30 L. J., P. M. & A. 112.

(*h*) Rule 18, C. B.

B.

(*i*) *Ibid*.

(*j*) Rule 19, C. B.

(*k*) 20 & 21 Vict. c. 85, s. 42.

T

Citation—
service of.

bate Court) (*l*), that Court had power to issue citations, which might be served and be effective beyond its jurisdiction (*m*).

On agent.

If the party cited be abroad, having an agent resident in England, such agent must be served with a true copy of the citation (*n*).

Advertisement.

The proper form of affidavit that a person resident abroad, and cited by advertisement, has no agent in England, is, that he has no attorney, agent or correspondent in England; an affidavit that he has no lawfully-appointed attorney or agent in England is insufficient (*o*).

Where a husband and wife, resident abroad, have been served with a citation by advertisement, there should be an affidavit that neither of them has any agent in this country; and where the party, in respect of whose estate a grant is asked for, died abroad, there should be an affidavit that he left personal property in England, otherwise the Court has no jurisdiction to make the grant (*p*).

On married
woman.

A married woman should be served in the presence of her husband (*q*). But where a citation, calling on a married woman to accept or refuse administration, had not been so served, but a renunciation had been duly executed by her, and by her husband, the Court made a grant without requiring fresh service (*r*).

On minors.

Service of a citation on a minor is effected by serving it on him in the presence of his natural or legal guardians, or of some person upon whom the care and custody of the minor has for the time being devolved (*s*). Generally, in all cases of process served on a minor, the Court requires an affidavit of its having been served in the presence of

(*l*) C. P. Act, s. 23.

(*m*) *Collet v. Collet*, 3 Curt. 726.

(*n*) Rule 19, C. B.

(*o*) *Kenworthy v. Kenworthy & Watson*, 32 L. J., P. M. & A. 107.

(*p*) *Evans v. Burrell*, 4 Sw. & Tr. 185.

(*q*) *Hallet v. Cox & others*, 28

L. J., P. & M. 55, notis.

(*r*) *Herbert v. Shiell*, 33 L. J.,

P. M. & A. 142.

(*s*) *Brown v. Wildman*, 28 L.

J., P. & M. 54; *Cooper v. Green*, 2 Add. 454.

his natural or legal guardian, or at least, in that of some person upon whom the actual care and custody of the minor for the time being has properly devolved. Citation—
service of on
minors.

An affidavit that a minor was served with a citation “in the presence of A., his guardian,” is not sufficient; but it should be shown how A. became his guardian (*u*).

Semble, that a solicitor cannot accept service of citations for infants (*x*).

But where the minor was resident in Derbyshire in service, and her mother, her natural guardian, resided in Middlesex, the Court granted administration to a creditor without requiring the citation to be served on the minor in the presence of her mother; a copy of it sent by post having been duly received by the minor (*y*). And where four out of five minor children of a deceased intestate and widower, signed a proxy electing a guardian to take administration of their father's effects, the other child being restrained from joining in the proxy by the intervention of a friend, with whom she resided, and who refused to allow service of the decree on the minor, by the apparitor of the Court, he showed the original decree under seal to the person under whose care the minor was living, and left a copy of it at her residence:—Held sufficient (*z*).

And, where a citation issued by a creditor of a deceased, calling on minors to accept or refuse letters of administration, was personally served upon them, but the person under whose care they were, though he had notice of the citation, declined to be present at the service: the next of kin of the minors had also notice of the citation, and ineffectual attempts to serve him were made:—Held that the service was sufficient (*a*).

- | | |
|---|---|
| (<i>u</i>) <i>Johnson v. Weldy</i> , 30 L. J., | P. M. & A. 126. |
| P. M. & A. 170; 2 Sw. & Tr. 313. | (<i>z</i>) <i>Sprigg v. Banks</i> , 4 No. of |
| (<i>x</i>) <i>Ryves v. Ryves</i> , 30 L. J., P. | Cas. 102. |
| & M. 144. | (<i>a</i>) <i>Lean v. Vines & another</i> , |
| (<i>y</i>) <i>Lainson v. Naylor</i> , 29 L. J., | 33 L. J., P. M. & A. 88. |

Citation—
service of on
lunatic.

Where a person whom it is necessary to cite as interested in the estate of the deceased is lunatic, and a committee of his estate has been appointed, service of the citation on such committee is sufficient: it is not necessary that the lunatic should be personally served in the presence of some medical man (*b*).

Service by
whom.

It is contrary to the practice of the Court to allow a citation to be served by the party who has extracted it (*c*).

Indorsement.

There is no *express rule* in the Probate Court, requiring any indorsement of the service on the citation, as in the Divorce Court, or on a writ of summons. In practice, however, it was done, and in the authorized forms issued under the rules we find that the practice is recognized, and the form of the indorsement is supplied in every form of citation issued. It has now been expressly decided that when a citation has been served, a certificate of service should be indorsed upon it (*d*).

Procedure
after service.

Before a party can proceed after the service of a citation, an appearance must have been entered by or on behalf of the party cited, or an affidavit of personal service and of non-appearance must, together with the citation, have been filed in the registry; or if personal service has not been duly effected, the order of the Judge, or of one of the Registrars in his absence, founded on an affidavit, and giving leave to proceed must have been obtained. In case the citation has been advertised, the newspapers containing the advertisement, together with the citation and an affidavit of non-appearance, must be filed in the registry (*e*).

Return of.

After service the citation duly indorsed should be returned into the registry. When the estate of a deceased, who died without any known relation, was barely sufficient to pay his liabilities, and a citation had been issued and

(*b*) *In the goods of Surtees*, deceased, 28 L. J., P. & M. 88.

(*c*) *Glyde v. Davie*, 33 L. J., P. M. & A. 184.

(*d*) *Goodburn v. Bainbridge & others*, 2 Sw. & Tr. 4.

(*e*) Rule 20, C. B.

served on behalf of a creditor on the Queen's proctor, and by advertisement, but had been lost or destroyed by his solicitor's clerk, who had absconded for embezzlement, the Court dispensed with the rule requiring the citation to be returned into the registry, and made the grant of administration to the creditor (*f*).

Citation—
return of.

An affidavit of service of a citation should identify the citation served: an affidavit of search and non-appearance should state when the search was made; and if two persons have been cited and neither has appeared, it should state that no appearance has been entered by or on behalf of "either of them" (*g*).

Affidavit of
service;
of search and
non-appear-
ance.

Appearance.] The rules relating to appearances are 26, 27 and 29, C. B.

The Registrars order that, without the order of the Judge or the permission in writing of one of the Registrars, no appearance shall be entered for any person claiming an interest other than the following—

Who may
enter.

1. Executor;
2. Legatee (specific, pecuniary or residuary) in trust or beneficial;
3. Next of kin;
4. One of the persons entitled in distribution in case of an intestacy;
5. Executor or administrator of a beneficial legatee, next of kin or person entitled in distribution, who survived the testator or intestate, but is since dead;
6. Creditor;
7. Executor or administrator of creditor;
8. Husband of any person claiming an interest in one of the above characters.

The appearance entered on behalf of an executor or legatee, or the representative of a legatee, shall state the date of the will or codicil under which he claims interest.

(*f*) *In goods of Robinson*, 4 Sw. & Tr. 43.

(*g*) *Harenc v. Dawson* 32 L. J., P. & M. 94.

Appearance.
Directions for
entering.

Practical
directions.

Similarly next of kin or persons entitled in distribution, or their representatives, must set out their relationship to the deceased. The appearance is entered in a book called the appearance book, and kept by the clerk of the papers. *Take the draft entry to the clerk of the papers, it must contain, 1st, the name in full of the party appearing; 2nd, his interest, which will be, except under special circumstances, one of those set out above; if he be executor or legatee, or representative of executor or legatee, set out the date of the will or codicil under which he claims; if he be next of kin, person entitled in distribution or representative of such, set out his relationship to the deceased; 3rd, an address within three miles of the General Post Office. This is generally the address of the solicitor, if within the distance.*

Where, however, a caveator, in his appearance, alleged himself to be an executor in the last will of the deceased, without inserting the date, he was held to have a right to call for an affidavit of scripts, without swearing as to his belief that he is an executor in some paper left by the deceased, and *semble*, without being liable to costs (*h*).

Non-appearance.

In case the party cited does not appear within the time limited in the citation, the cause shall proceed in default; nevertheless the party cited may enter an appearance at any time before a proceeding has been taken in default, or afterwards by leave of the Judge, or one of the Registrars (*i*).

Effect of.

An executor by non-appearance to a citation, calling upon him to take probate of a copy of a missing will, is barred from afterwards obtaining probate of the original will when found (*k*).

Where the parties interested under a testamentary paper do not appear to a citation calling upon them to

(*h*) *Antrobus v. Leggatt*, 3 Hag. Ecc. R. 616.

(*k*) *Davis v. Davis*, 31 L. J., P. & M. 216.

(*i*) Rule 29, C. B.

propound it, administration will be granted as in case of intestacy, without proof of the invalidity of the paper, although it is good on the face of it; but *semble*, the Court will not upon the mere consent of the parties interested, when they have not been cited, pronounce against such a testamentary paper, without proof of its invalidity (*l*). Non-appearance—effect of.

A citation was personally served upon the executor and universal legatee, named in a will of the deceased, calling upon him to bring into the registry the probate of it, which had been granted to him, and to show cause why the probate should not be revoked and declared null and void, and the will itself declared null and invalid; the probate was brought into the registry, but no appearance entered to the citation, the Court, although there was no evidence before it, as to the invalidity of the will, revoked the probate granted, and ordered probate of an earlier will to issue in common form to the executor named therein (*m*).

So, where a testator having duly executed a will, subsequently made another, betraying on the face of it insanity: the executors of the former will took out a decree calling on all persons interested in the latter paper to propound it, with an intimation that, on not appearing, the Court would decree probate of the former will: the persons cited executed proxies, declining to propound the latter paper, and consenting to probate being granted of the former:—Held, the executors of the former paper were entitled to probate in common form (*n*).

When an executor being called upon by a citation to do certain acts appeared and complied with the citation in part only; for not complying with all the requisites, he was, after notice given to him, pronounced in contempt,

(*l*) *Morton v. Thorpe*, 32 L. J., P. & M. 174; 3 Sw. & Tr. 179.

(*n*) *Palmer & Brown v. Dent & others*, 2 Robert. 284. See also

(*m*) *Crosby v. Noton*, 36 L. J., P. & M. 55.

Edwards v. Martin, *ibid.* 285.

Appearance. and the contempt directed to be signified: notwithstanding, it was suggested that a decree ought in the first instance to have been issued, and not a citation (*o*).

Affidavit of Scripts.] See Rules 30, 31 and 32, C. B., and Form No. 10, Appendix, Form, C. B. The affidavit of scripts is to be filed by each party within eight days (*p*) of the entry of appearance by the defendant. As to this period of eight days if it pass by, and how calculated, see Rules 89, 90 and 91, C. B.

What is a script.

"A will, codicil, draft of will or codicil, or written "instructions for the same," is a script (*q*). If the will, &c. be destroyed, a copy, or any paper embodying the contents, becomes a script, even though not made by or under the direction of the testator.

All testamentary papers are to be brought into the Court when required: a duplicate is a part of a will, and to be considered as a testamentary paper (*r*).

Form of affidavit.

An affidavit of scripts that no testamentary paper of the deceased had at any time come to the appearer's *hands* or *possession*, without adding that it had not come to his knowledge is insufficient (*s*).

Every script in the possession of the deponent should be annexed; each is generally marked with an alphabetical letter, as an exhibit; if not within the possession of the deponent, they should be described, and, if possible, the place where they are, as, "now remaining in the Principal Registry of the Court," or the like.

Pencil writing.

Should there be any pencil writing on the script, see Rule 75, C. B.

Under the old practice, it was held that a party entering a caveat, and alleging himself to be an executor in the last will of the deceased, without inserting the date, has a

(*o*) *Edwards v. Martin*, 2 Robertson, 285.

(*p*) Rule 30, C. B.

(*q*) Rule 31, C. B.

(*r*) *Killican v. Lord Parker*, 1 Lee, 662.

(*s*) *Colvin v. Fraser*, 1 Hag. Ecc. R. 117, *notis*.

right to call for an affidavit of scripts, without swearing as to his belief that he is an executor in some paper left by the deceased; and, *semble*, without being liable to costs (t). Affidavit of scripts.

Pleadings in general.] See Rules 40 and 40 (a), Amended Rules, 1865, and Rules 41, 42, 43, 44 and 45, C. B. Rule 40 of the original (C. B.) Contentious Business Rules has been amended by Rules 40 and 40(a) of the Rules of the 29th of December, 1865, which see in Appendix, or form of declaration, see Forms Nos. 6 and 7, C. B.

Where pleadings contain irrelevant matter, application should be made at chambers to have it struck out (u). Irrelevant.

Where the executors of a will, having called in probate of an earlier will, in their declaration, propounded the later will, and alleged that the defendant had surreptitiously obtained probate of the earlier will, knowing of the existence of the later; and that such probate ought to be revoked, and the will pronounced invalid: the Court ordered the part of the declaration relating to the earlier will to be struck out (x).

Where a widow, in opposition to a will, sets up habitual intoxication, weakened capacity, and custody, she may also plead insane dislike on the part of her husband, to account for their living apart, though the delusion may not be sufficient *per se* to invalidate the will (y).

Where plaintiff propounded a will of A. B., dated the 3rd of March, 1862; the defendant pleaded secondly that, subsequently to the alleged execution of the said will, the testator duly executed a will on the 29th of March, 1864; thirdly, that the will propounded, however executed, was duly revoked by and by virtue of the will of the 29th of March, 1864; fourthly, that the will of Immaterial pleas.

(t) *Antrobus v. Leggatt*, 1 Hag. *botham*, 30 L. J., P. M. & A. 38; Ecc. R. 416. 2 Sw. & Tr. 121.

(u) *Farler v. Farler*, 27 L. J., P. & M. 108. (y) *Reay v. Cowcher*, 1 Hag. Ecc. R. 75.

(x) *Rosbotham & others v. Ros-*

Immaterial
pleas.

the 29th of March, 1864, was, subsequently to its execution, destroyed by the deceased with the intention of revoking the same:—Held that the second and fourth pleas were bad, as neither showed that the will propounded was not entitled to probate, and that the words “*howsoever executed*,” in the third plea, must be struck out, as, for the purposes of the plea, it must be assumed that the will propounded was duly executed (z).

Particularity
sufficient.

To a declaration propounding a will of A., the plaintiff pleaded that it “was, after the execution thereof, revoked by another will duly executed by A.,” on demurrer to the plea for not stating when the alleged revocatory will was made, and not showing that it was inconsistent with the will propounded:—Held first, that the plea was bad, on the ground that a will relied upon as revoking a former will, should be pleaded with the same circumstantiality as to the time when made, and its due execution, as if it had been propounded. 2ndly. That the plea need not set out the will to show their inconsistency (a).

Destroyed will.

In propounding a destroyed will, it is necessary to set out its date if possible, but it is not necessary to set out its contents, or to allege its destruction (b).

Actual hour of
signing.

In pleading a will the party setting it up need only specify the day on which it was signed, the actual hour to be proved at the trial if necessary.—Lord Penzance (Chambers), 6th June, 1871.

Plea.

In an interest suit, instituted by the Queen’s proctor, who alleged that M. E., the deceased, died a widow, without lawful issue, intestate and a bastard; the defendant, who claimed as nephew of the deceased, pleaded that M. E. was not a bastard, that she was the legitimate child of S. W. and Mary his wife, that S. W. and Mary his wife had one other lawful child of whom the defendant was the lawful child:—Held that the plea was sufficient, and that

(z) *Powell v. Powell*, 35 L. J., P. M. & A. 39.
P. & M. 5.

(b) *Glen v. Burgess*, 32 L. J.,

(a) *Leake v. Hurst*, 30 L. J., P. & M. 157; 3 Sw. & Tr. 43.

it was not necessary that the time and place of the birth of Particularity. the deceased's parents should be alleged (c).

In a suit for administration, instituted on behalf of the crown by the Queen's proctor, who alleges that the deceased died a bastard, &c., a defendant, who claims to be next of kin of the deceased, must in his plea set out his pedigree, but in doing so, particulars as to the time and place of a marriage and the date of a birth need not be alleged. The defendant, in setting out his pedigree, alleged, *inter alia*, that the deceased was the legitimate daughter of Francis Godman Capell by his lawful wife: on motion for an order that the plea should be amended by setting out when, where, and to whom, F. G. C. was married, and the date of the deceased's birth:—Held that the plea was sufficient (d).

Where the plaintiffs, in a declaration in the usual form, propounded a will and two codicils. The will contained the following clause: "Any further arrangement I may wish to make for the disposal of property I shall express by writing in a book, which will be directed to my executors;" after her death, a book was found containing testamentary directions, part dated before the will, the rest after the date of the codicil:—Held that the defendant had a right to call upon the plaintiffs to declare whether they intended to propound the book as part of the will. Semble, that when necessary the party propounding testamentary papers will be ordered to give particulars as to the papers he intends to set up (e).

Pleas of undue influence, intimidation, duress, and improper control, are bad, unless the names of the persons who exercised such undue influence, &c. are specified (f).

A plea that a will was procured by undue influence, is bad, unless the name of some person exercising the undue

(c) *Queen's Proctor v. Williams*, 31 L. J., P. & M. 90.

(d) *Queen's Proctor v. Wallis*, 31 L. J., P. & M. 97.

(e) *Marsh v. Corry*, 33 L. J., P. & M. 112; 3 Sw. & Tr. 458.

(f) *Harris v. Bradbury*, 30 L. J., P. M. & A. 168.

Particularity
insufficient.

influence is stated in it; a plea alleging that a will was procured by the undue influence of A. and others, is good, but the other side is entitled on summons to particulars of the others (*g*).

To a declaration propounding a will, the defendant pleaded—1st. That at the time of the pretended execution of the will, the deceased was incapable of executing it; 2. That the will was prepared and made by A., and that the deceased had not given A. directions to prepare or make it:—Held, on demurrer, that both pleas were bad (*h*).

“Not the will
of deceased.”

Under a plea that a paper propounded “is not the will of the deceased,” evidence of undue execution, or incapacity, is not admissible; the meaning of that plea is, that the deceased did not execute the paper, intending that it should operate as his will (*i*).

Now a bad
plea.

This plea is now held to be bad for ambiguity (*k*).

A declaration propounding a will, made by a person domiciled abroad, should aver in terms that the will was valid according to the law of the foreign country; a declaration propounding a will, averred that a competent tribunal of the State of Ohio, where the deceased died domiciled, by its definitive decree, ordered the said will, being satisfied that it was duly executed according to the law of Ohio, to be received, and admitted the said will to probate as a good and valid will by the law of the said state, for the purpose of passing personal estate, that by virtue of the said definitive decree, the said will is entitled to be proved as a good and valid will for passing personal estate in England:—Held insufficient (*l*).

Fraud.

Where it is intended to invalidate a will on the ground

(*g*) *West v. West*, 34 L. J., P. & M. 146.

(*h*) *Middlehurst v. Johnson*, 30 L. J., P. M. & A. 14. See now, however, *Hastilow v. Stobie*, 35 L. J., P. & M. 18.

(*i*) *Cunliffe v. Cross*, 32 L. J., P. & M. 68.

(*k*) *Owen v. Davis*, 33 L. J., P. & M. 201; 3 Sw. & Tr. 588.

(*l*) *Ishernood v. Cheetham*, 31 L. J., P. & M. 99; 2 Sw. & Tr. 607.

of fraud or of circumstances tantamount to a charge of Particularity. fraud, there should be a plea on the record alleging that the execution of the will has been obtained by fraud; a plea of undue influence is insufficient to let in a charge of fraud against the party propounding the will (*m*).

Declaration.] The rules which affect the declaration are Rules 33, 34, 35 and 36, C. B. In addition an important modification is introduced by Rule 40 of the Amended Rules (29th December, 1865) C. B., which see in Appendix.

From this rule arises the practice that, when antagonistic parties are setting up different wills each party files a declaration propounding the will he relies on, and his opponent pleads to it, whence the proceedings are somewhat in the nature of cross suits. The reason of this seems to be the practice that a will, to be admitted to probate, must always be propounded in a *declaration*; it is not quite clear whether, should a defendant wish simply to impugn a prior will, as being revoked by a subsequent one, without wishing to obtain probate of the latter, he would be at liberty to do so, without filing a declaration, as the rule only applies to cases where each wishes to *propound* a will. However, such a course, if allowable, would be very unwise, as the second will, when attempted to be proved, might be again attacked, and two trials would arise instead of one.

Plea.] The rules affecting pleas are Rule 38, C. B., and Rule 40 (a) of the Amended Rules, 29th December, 1865. From the latter rule it appears that only certain pleas (five in number) are allowed without obtaining the leave of the Judge on summons, and that the last of these pleas, namely, "that the deceased at the time of execution did not know and approve of the contents of the will" must be accompanied by particulars.

The plea must be delivered within eight days from the service of the declaration, and a copy is to be filed in Time for pleading.

(*m*) *White v. White & Cato*, 2 Sw. & Tr. 504.

Plea.

the registry on the same day; in counting the eight days remember Rule 91, C. B. For form of plea see Nos. 8 and 9, C. B.

Further Pleadings.] The pleadings may, as at common law, be continued through further stages, but such cases are very unlikely to occur; the rule applying to the further pleadings is Rule 39, C. B.

Demurrers.] As to demurrers they stand on the same footing as at common law. The rule relating to them is Rule 56, C. B. Summonses, however, are much more commonly used in the Probate Court than at common law, for the purpose of testing the less important propositions of law. So that a demurrer rarely comes on, unless there is some unusual and substantial question of law to be argued.

Where a party takes no step on an order to join in demurrer within a given time, the party demurring is, at the expiration of the time, entitled to judgment on the demurrer (*n*).

Service of pleadings.

For the service of pleadings, the address is given in the citation (Rule 17, C. B.), and in the appearance (Rule 27, C. B.). It is sufficient to leave all pleadings and other instruments, *personal service of which is not expressly required by the rules*, at this address (*o*).

Time.

It must be remembered that in the Probate Court time is reckoned in all cases exclusively of Sundays, Christmas Day and Good Friday, that is to say, these days are entirely struck out of the calculation (*p*). In case a party fail to deliver his pleading in time see Rule 44, C. B.

Pleadings for delivery and filing.

The pleadings should be written on foolscap paper, folded lengthwise; the name of the cause should be endorsed upon it, and the nature of the pleading as "declaration," "plea," or the like; the name and address of the attorney or proctor should also be endorsed at the bottom in the usual manner.

(*n*) *Wells v. Wells*, 2 Sw. & Tr.
607.

(*o*) Rule 28, C. B.
(*p*) Rule 91, C. B.

Issue.] The pleadings being completed, the issue is now made up, and within fourteen days from the delivery of the last pleading, the party declaring (not necessarily the *plaintiff*, but the party propounding the will, which is sometimes the defendant) is to deliver to the other parties in the cause the issue, in Form No. 11, C. B., or in a form as near thereto as the circumstances of the case will admit, but the issue is not to be filed (*q*).

In a suit for revocation of probate the defendant is the party who should deliver the issue (*r*).

This issue is to be accompanied by a notice (*s*), called the "Notice as to mode of trial;" for its form see Form No. 12, C. B. Should he neglect or omit to deliver this notice with the issue, he has still sixteen days to do so, after which the other party may give him a similar notice, and proceed to obtain directions as to the mode of trial. There is nothing, it seems, to prevent the party declaring from giving this notice after the lapse of sixteen days from the delivery of the issue, but his right to do so is no longer exclusive, and is shared by his opponent.

Notice of mode
of trial.

Interest Causes.] Interest causes are suits where the legal interest of a person in the estate of the deceased is denied. Such a suit may arise either as a collateral question in a testamentary cause, or as an original suit, where the right to administration of the effects of an intestate is disputed.

For instance, where a party applying for a grant is stopped by a caveat, the caveator is warned, he enters an appearance setting forth his interest, the party applying for the grant then takes out a summons, calling on the caveator to show cause why he should not file his declaration propounding his interest. The order is thereupon made, and the caveator filing his declaration, the case proceeds as a regular interest cause; it is obvious that such a suit may arise equally in testamentary causes, as

(*q*) Rule 46, C. B.

Sw. & Tr. 446; 31 L. J., P. & M. 153.

(*r*) *Brandreth v. Brandreth*, 2

(*s*) Rule 47, C. B.

Interest causes. in cases of intestacy. The rules and forms relating to interest causes are 37, 61, 62 and 63, and Forms Nos. 7 & 9, C. B.

When interest may be disputed.

By Rule 37, in a testamentary cause after delivery of the declaration, the interest of the party to whom it has been delivered cannot be disputed by the party declaring, except by leave of the Judge. Where defendants entered a caveat in the goods of J. S., and afterwards, upon this caveat being warned by the plaintiff, entered an appearance claiming as universal legatees of J. S.; plaintiff then filed a declaration alleging that J. S. died intestate, leaving the plaintiff his lawful widow. The defendants in their plea propounded a will of J. S., appointing A. B. sole executrix and universal legatee: upon motion by the plaintiff for an order that the defendants should amend their plea, by setting forth in it such matter as would entitle them to administration, with the will of J. S. annexed:—Held that by filing the declaration without objecting to the appearance, the plaintiff had admitted the defendants' title to set up the will (*t*). So, under the practice of the extinct courts, a party having once admitted an interest was held not to be at liberty to retract it (*u*).

This rule obviously arises from the fact that the appearance must set forth the interest of the party on whose behalf it is entered in the estate and effects of the deceased (*x*). And that, therefore, the plaintiff has ample opportunity then to investigate or challenge the nature of the interest set up.

In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the Judge, adduce proof on one and the same trial of their interests respectively (*y*).

In interest causes the pleading of each party must show

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| (<i>t</i>) <i>Inkson v. Greeves & others</i> , 212. | |
| 32 L. J., P. & M. 69; 3 Sw. & Tr. 39. | (<i>x</i>) Rule 26, C. B. |
| (<i>u</i>) <i>Panchard v. Weger</i> , 1 Phill. | (<i>y</i>) Rule 61, C. B. |

on the face of it, that no other person exists having a prior interest suit. interest to that of the claimant (z).

Interest suits, whether in cases of testacy or intestacy, generally commence in the same way by the party seeking a grant denying the interest of his opponent, set out in the appearance. However the commencement may be, where A. intends to deny the interest of B. his opponent (which, as has been shown, must in testamentary suits be by the party declaring before the delivery of the declaration), and so to raise an interest suit, he should take out a summons calling on B. to show cause why he (B.) should not propound his interest and file his declaration. This is a rule almost of course. But it does not follow that B. admits the interest of A., hence the rule above set out (a). Practical directions.

As each party claims a *right*, it follows that if a person exists who is in possession of a prior right, that no interest can remain in such party. Therefore, Rule 62 directs that the pleadings of each party must show that no prior right exists.

In an interest cause it is not necessary to prove the marriage of the common ancestor (b).

A party in possession of an administration is not bound to propound her interest till the party calling it in question has established her own (c).

The next step to consider, whether the suit be one for proof of a will in solemn form, an interest suit, or the like, is the method of determining the facts in dispute.

Mode of Trial.] See C. P. A. 1857, sect. 35, and Rules 47, 48 and 49, C. B. The extinct Courts had no power of trying causes before themselves by a jury, and, therefore, the enactment of the statute was needed to confer the power on the present Court. As a portion only of the causes tried require a jury, the rules regulate the mode of trial which may be before the Court itself, either with or

(z) Rule 62, C. B.

2 Lee, 85.

(a) Rule 61, C. B., *supra*.

(c) *Hibben v. Calembourg*, 1

(b) *Eaton v. Bright & another*, Lee, 655.

Mode of trial. without a jury, or before a Judge of Assize—the Court has also power to direct the issues to be tried before a County Court, where the County Court has jurisdiction (*d*). Though the issue is not filed, a copy of the notice given under Rule 47, C. B., must be filed in the registry, with the case for motion (*e*).

When. The Court will not make an order as to the mode of trial of a cause, unless all the pleadings have been regularly filed in the registry (*f*).

Who to move for directions. In a suit for revocation of probate, the defendant is the party who should deliver the issue, and move for directions as to the mode of trial; the Court will not direct an issue to be tried at the Assizes, unless reasons for so doing appear on affidavit (*g*).

The mode of trial is in the discretion of the Court, and though generally favourable to allowing juries, if either party ask for a jury, yet if it is a question which it is unreasonable to ask a jury to decide, it will refuse it. The Court refused to allow an issue as to the contents of a destroyed will to be tried by a jury (*h*).

And where the cause, from the nature of the issues of fact raised, is a more proper one to be tried before the Court itself, than by a jury, the Court will, on the application of one of the parties, direct it to be heard without a jury, unless such application is opposed by the heir-at-law (*i*); and where the main question to be decided was presumptive revocation of a will, the Court (the defendants who were not heirs-at-law opposing) directed the cause to be tried by the Court without a jury (*k*).

In an interest suit, in which a question of legitimacy was raised, between a person claiming to be the lawful nephew

(*d*) *Dunn v. Dunn*, 1 Sw. & Tr. 521; C. P. A. 1857, s. 59.

(*e*) Rule 48, C. B.

(*f*) *Isaacks v. Whaley*, 11 W. R. 549.

(*g*) *Brandreth v. Brandreth*, 31 L. J., P. & M. 153.

(*h*) *James v. Ebster*, 36 L. J., P. & M. 46.

(*i*) *Quick v. Quick*, 3 Sw. & Tr. 460; 33 L. J., P. & M. 108.

(*k*) *Smith v. Hoad*, 3 Sw. & Tr. 462.

and next of kin of a deceased intestate, and the Queen's proctor, the Court directed the issues joined to be tried by a jury on the application of the next of kin, although the application was opposed by the Queen's proctor (*l*). Mode of trial.

It has power to direct issues of fact to be tried before itself by a jury reserving issues of law, arising out of the pleadings to be tried by itself alone (*m*), and to direct some of the issues of fact to be tried by a jury, and some before itself alone (*n*). Separating issues.

Application on behalf of the plaintiffs to direct a cause to be tried at the coming Assizes at Derby refused; there is no similarity between the position of a plaintiff here, and his common law right to lay the venue where he pleases: a testamentary suit is at large, and ought to be tried before the Judge in the Court of Probate, though he has a discretionary power to send an issue to be tried before a Judge of Assize (*o*). Assizes.

In order to save expense and delay, the Court will generally allow issues in a testamentary suit, to be tried at the Assizes. When, however, the suit was for revocation of probate, and there had been great delay in calling in the probate, and the property of the deceased was large, the Court considered those circumstances sufficient grounds for refusing an application by the plaintiff, opposed by the defendant, that the issues should be tried at the Assizes, but ordered that the defendant, if successful, should not be allowed more costs than he would have been entitled to if the issues had been tried at the Assizes (*p*).

Where the principal issue raised in a testamentary suit was whether the deceased had destroyed, with the intention of revoking it, a will which was not forthcoming; the Court refused to send the issues for trial at the Assizes (*q*).

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| (<i>l</i>) <i>Queen's Proctor v. Williams</i> , 31 L. J., P. & M. 86. | 1 Sw. & Tr. 143. |
| (<i>m</i>) <i>Crispin v. Dogliani</i> , 31 L. J., P. & M. 64; 2 Sw. & Tr. 493. | (<i>p</i>) <i>Ridgway v. Abingdon & another</i> , 32 L. J., P. & M. 107; 11 W. R. 500. |
| (<i>n</i>) <i>James v. Foster</i> , <i>supra</i> . | (<i>q</i>) <i>Beech v. Rathbone</i> , 35 L. J., P. & M. 26. |
| (<i>o</i>) <i>Cooper & another v. Moss</i> , | |

Mode of trial. The Court of Probate has no power to order an issue to be tried at the Assizes, by a Judge without a jury. If both parties wish the issue to be so tried, they should apply to the Judge who will try the issue under section 1 of the Common Law Procedure Act, 1854 (*r*).

County Court. When a County Court has jurisdiction, the Court may, though application is made on behalf of all the parties to the cause for it to be tried at the Assizes, still in its discretion direct it to be tried in the County Court (*s*).

And when the Judge of the Court of Probate is satisfied that the County Court has jurisdiction over a cause, he will direct a cause to be tried before the Judge of a County Court having jurisdiction, and will also direct the papers in the cause to be transmitted to the County Court for the purposes of the suit; but he will give no directions as to the mode in which the cause shall be tried: it will be for the Judge of the County Court to decide whether the cause shall be tried before him with or without a jury (*t*).

Special jury. The Court will make it part of an order for the trial of a cause by a special jury, that if the applicant does not take the requisite steps for striking the special jury, the other party may have it tried by a common jury (*u*).

Record.] See Rules 50 and 51, C. B.

Within eight days after the direction of the Judge has been obtained (for default and computation of time, see Rules 89, 90 and 91, C. B.), the party declaring shall deposit the record of the cause in the registry (*x*). For a form of record, see Forms Nos. 13 and 14, C. B.

The record is made out, as at common law, on parchment, and the particulars (if any) are written on paper, and annexed to the record.

Setting down for Trial.] The record having been made

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| (<i>r</i>) <i>Bushell v. Blenkhorn</i> , 35 L. J., P. & M. 75. | 601; 32 L. J., P. & M. 3. |
| (<i>s</i>) <i>Dunn v. Dunn</i> , 1 Sw. & Tr. 521; 30 L. J., P. & M. 40. | (<i>u</i>) <i>Morris v. Owen</i> , 30 L. J., P. & M. 213. |
| (<i>t</i>) <i>Norris v. Allen</i> , 2 Sw. & Tr. | (<i>x</i>) Rule 50, C. B. |

up and deposited in the registry, the next step is for the party who has deposited the record to set down the cause for trial (*i. e.*, trial by jury) or hearing (*i. e.*, before the Court itself without a jury), and to give a notice of his having done so, to each party who appears in the suit. Should he delay setting the cause down for one month, then any of the other parties may set it down and give a similar notice. A copy of this notice must be filed in the registry (*y*). No case is to be called on until after ten days from the setting down and notice (*z*). A setting down paper and notice can be obtained from any law stationer.

Notice of trial
or hearing.

If the trial is to be had before a jury, an important divergence from the practice of common law takes place, which arises from the statute itself (*a*). Instead of the issues appearing on the record being submitted to the jury, the party declaring prepares a form of questions for the jury, which is settled by one of the Registrars, and on that they give their verdict (*b*). If, however, any party is aggrieved by the form of the questions, he may apply to the Judge by summons to amend it (*c*). The questions are, when settled, written on parchment and filed in the registry, where they are annexed to the record. A form of "questions for jury" is given, see Form No. 15, C. B.

Questions for
jury.

Act on Petition.] Minor questions may be brought before the Court on petition. By Rule 64, C. B., "any question arising in a cause, and not being one of interest, domicile, or other matter usually brought before the Court by declaration and plea, may be brought before the Court by petition." These questions are, therefore, of a kind of medium importance, too grave to be brought before the Court on motion merely, and yet not so important as those which require regular pleadings. These questions may arise when no suit is pending, or as collateral or incidental to a cause.

(*y*) Rule 54, C. B.

(*b*) Rule 52, C. B.

(*z*) Rule 55, C. B.

(*c*) Rule 53, C. B.

(*a*) C. P. A. 1857, s. 37.

Act on petition.

The distinction between a regular suit and an act on petition may be thus illustrated. If there is a contest for a grant of administration, and the interest, *i. e.*, the fact of relationship of one or both the parties to the deceased is denied, the question must be tried by a regular proceeding and suit. If the interest is admitted, but the parties being in an equal degree of relationship, but the one seeks to deprive the other on the ground of want of business habits, improper conduct or the like, of the grant, that question should be decided on act on petition. The distinction is obvious: the former question is fit and proper for a jury, the latter, quite the contrary; and though it may be too much to say that the point, whether the question is not or is one fit for a jury, is the criterion whether it is fit or not to be tried by act on petition; yet it is certain that questions which are proper for a jury are not proper to be heard on petition. Questions, therefore, of propriety of conduct and personal qualifications, jurisdiction (in some instances), the justification of sureties, guardianships and the like, are the kind of questions to be put before the Court by act on petition.

The proceedings are very simple, and are regulated by Rules 64 to 70 (both inclusive), C. B.: a form of petition, Form No. 28, C. B., is given: a form of answers is also amongst the precedents. The proceedings continue by replication, rejoinder, &c. as ordinary proceedings, "until the petition is concluded," *i. e.*, the parties are at issue. The rules seem to contemplate only those acts on petition which arise in a cause, but the statute seems to refer possibly to petitions where no suit is pending: see C. P. A. 1857, sect. 26. However, petitions do generally arise when no cause is pending. Should either party desire the question, and the question be one fitted, to be tried on a more regular form, or *vice versâ*, a summons may be taken out, calling on the adverse party to show cause why the petition should not be abandoned, and the proceedings be by declaration and plea, or *vice versâ*.

The petition is set down (*d*) as a cause; notice is to be given, and it takes its place amongst the causes to be heard before the Court itself, and is treated as any other cause to be heard without a jury. The evidence is by affidavit and other proofs, which must be filed in the registry within eight days after the petition is concluded. The other proofs would seem to mean documentary evidence, as letters and the like, which would be exhibits to ordinary affidavits.

Act on petition.

Evidence on.

These affidavits should not travel out of the matters alleged in the petition, as where affidavits in support of a petition, as to the right of a party to obtain letters of administration, go into matters not set out in such petition, the Court will not allow counter affidavits to be brought in at once, but at the hearing will either refuse to read such parts of the affidavits, or will then, if they be material, permit the other party to answer them on oath (*e*).

Motions.] Motions in the Court of Probate are similar to what they are in the Common Law Courts, though the method in which they are made somewhat varies. They are requisite in both contentious and non-contentious business. All questions of difficulty arising before the Registrars in granting probate or administration, whether there be a suit pending or not, may be referred by them to the Court. In some cases they are expressly directed to do so (*f*).

The practice for making a motion in the Court of Probate is as follows:—*A case for motion is prepared, i. e., a statement of the proceedings (if any) and of the facts on which the motion is founded; it must conclude with a statement that "counsel will be pleased to move the Court to" decree or order as the case may be, what is desired by the applicant. It should be written on foolscap, folded lengthwise, and with a large margin.*

Practice.

The facts stated in the case for motion must be supported by affidavits. If a suit is pending, notice of the motion must be given to the other parties to the cause.

(*d*) Rule 70, C. B.

P. & M. 127; 4 Sw. & Tr. 4.

(*e*) *Cordeux v. Trasler*, 34 L. J.,

(*f*) Rule 6, Non-C.

Motions.

The case for motion on the affidavits, any original papers referred to by them in possession of the applicant, and a copy of the notice (if any) sent to other parties, is filed in the registry before two o'clock p.m., on the fourth day before the motion is to be heard. Motion days in the Probate Court are generally Tuesdays, so that remembering Rule 91, C. B., for computation of time, the usual day and hour for filing papers is before two o'clock on the previous Thursday.

Motion days.

Summonses.] As to summonses, full directions are given for them in Rules 98 to 106, C. B., both inclusive.

In the course of the proceedings, various interlocutory steps may arise, which may be here considered.

Amendment.] The Court possesses powers of amendment even at the hearing or trial of the cause. When the trial is before the Court with a jury, this power seems conferred by the C. P. A. 1857, sect. 36. The amendment of pleadings is provided for by Rule 42, C. B.; and the proceeding of the opposite party after amendment, by Rule 43, C. B.

Of citation.

A plaintiff, in a citation to bring in probate, described himself as one of the lawful cousins and next of kin of the deceased; and, upon an order obtained by the defendant, that he should propound his interest, filed an act on petition, in which he alleged that he was one of the executors and residuary legatees of B. deceased, who was the lawful cousin german of the deceased, and one of his next of kin, and living at his death: the Court gave the plaintiff leave to amend the citation, by inserting in it his correct description, upon payment of the defendant's costs up to the time of the amendment, exclusively of the costs of entering an appearance (*g*).

Amendment
before trial.

B. died in May, 1850, leaving a will, dated May, 1849, and two codicils, dated May, 1850; probate of these papers was taken in common form in July, 1850: in April,

(*g*) *Ridgway v. Abingdon*, 3 Sw. & Tr. 3; 32 L. J., P. & M. 4.

1858, two legatees under the will intimated their intention of disputing the two codicils, whereupon the surviving executors commenced a suit, and filed their declaration on the 25th of June; on the 21st of July, the defendants filed pleas, first, alleging that the codicils were unduly executed; and, secondly, that the testator was of unsound mind at the time of their execution: on the 18th of November, the plaintiffs set the case down for hearing, but it did not come on for trial; the defendants thereupon, on the affidavit of their solicitor, applied for leave to amend their pleas by inserting similar pleas as against the will, on the ground that since the pleas were filed, their solicitor had received information impeaching the validity of the will. The Court *hesitanter* allowed such amendment, on condition of a portion of a legacy already received by one of the defendants being brought into Court, the costs of the motion being paid, and the pleadings amended within a week (*h*). Amendment.

The Court will not allow a plea to be added after issue has been joined, and before the hearing, without an affidavit showing the necessity of such a plea (*i*). Adding plea.

The inclination of the Court is to allow the record to be amended at the trial by the addition of a new plea, rather than to shut out any defence which might be raised. The defendants were allowed to put on the record, at the trial, a plea that the will in dispute had been obtained by the undue influence of one of the plaintiffs, subject to the postponement and rehearing of the cause, if required by the plaintiffs, and to the payment by the defendants of all expenses incurred by such postponement (*h*). Amendment at trial.

Abatement.] There seems to be no express provisions, either in the statutes or rules, respecting the abatement of a suit by the death of the parties. There appears in the extinct Courts to have been some idea that, when a party to a suit died, the suit could be still carried on by not

(*h*) *Ware & Grove v. Claxton* P. & M. 49.
& Claxton, 1 Sw. & Tr. 251. (*h*) *Todd v. Simpson & another*,
(*i*) *Twells v. Clarke*, 33 L. J., 1 Sw. & Tr. 269.

Abatement.

naming him, but describing him as the client of such and such a proctor. However such a subterfuge might have answered there, it seems clear now that, in case of the death of a party, a suggestion must be entered on the record, or in the pleadings if before the record is made up, and the suit revived and carried on in the name of the legal personal representative of the deceased party. This was also the general practice in the extinct Courts (*l*).

Death after
hearing and
before judg-
ment.

When a plaintiff dies after the hearing and before judgment, the Court will not, on the application of his personal representative, give judgment, unless such personal representative has been made a party to the record (*m*).

Similarly, where a plaintiff dies after a verdict in his favour, the suit abates, and a suggestion of the death must be entered on the record before a decree can be made (*n*).

Staying Proceedings.] A. a native of France died, after many years' residence in London, leaving a will executed according to the English law, in which he appointed B. sole executrix; B. propounded the will in a declaration; C., the brother, who with the other of the next of kin had entered a caveat; filed pleas, and treated the will as that of a domiciled Englishman; some months afterwards, the cause having in the meantime been ordered to be tried by a special jury, C. and the other of the next of kin commenced proceedings in France to set aside the will, on the ground that the testator was a domiciled Frenchman, and that the will was not executed according to the law of France; the Court refused to stay the proceedings in the suit, pending the proceedings before the French tribunal, or to allow the pleadings to be amended, so as to raise the question of domicile, the facts as to the domicile having been within the knowledge of C. from the first, and the case standing for trial (*o*).

(*l*) *Hibben v. Calembourg*, 1
Lec, 558.

(*m*) *Staines v. Jones*, 31 L. J.,
P. & M. 10; 2 Sw. & Tr. 326.

(*n*) *Jones v. Jones*, 36 L. J., P.
& M. 43.

(*o*) *Duprez v. Veret*, 38 L. J., P.
& M. 5.

The Court refused to order that proceedings instituted in this Court to prove a will in solemn form should be stayed, because the heir-at-law had commenced actions of ejectment in reference to the real estate bequeathed by the same will (*p*). Staying proceedings.

Compromise.] D. propounded the will of E., which was opposed by H., one of the next of kin of E., and certain issues in the suit came on for hearing before the Court and a special jury; before the jury were sworn certain terms of compromise were signed by counsel on behalf of both parties, one of which terms was that a Scotch confirmation of the will brought into this Court by D. should receive the seal of the Court; (see 21 & 22 Vict. c. 56, s. 12.) Subsequently, the parties being unable to agree as to the meaning and effect to be given to the terms of compromise, D. moved to have the confirmation sealed and delivered out to him; the Court refused to give effect to one of the terms of the compromise, the parties being unable to agree as to the rest, but held that D. was entitled to take out the confirmation unsealed; he then filed a bill in Chancery for administration of E.'s estate, etc.; a demurrer to this bill for want of parties was allowed; the estate of E. was also alleged to be vested in trustees by a certain sequestration under Scotch Bankruptcy Acts; H. now moved for administration, with the will annexed *pendente lite*, or for administration limited to substantiate the proceedings in Chancery, and the Court held that the nominee of H. would be entitled to a grant of the latter description (*q*).

Where a suit is compromised before trial, the Court will not make the terms of compromise a rule of Court, as it has no power to enforce compliance with the terms; but it will make an order that the contentious proceedings be discontinued, and that the terms of compromise be filed in the registry (*r*). Before trial.

- (*p*) *Davies v. Devereux*, 35 L. J., P. & M. 77. *Dunlop*, 2 Sw. & Tr. 614.
 (*r*) *Roadnight v. Carter*, 3 Sw. & Tr. 421.
 (*q*) *Viscountess Hawarden v.*

Compromise. Where at the trial of an issue in a testamentary suit, by agreement between the parties, a verdict is taken by consent, such agreement cannot afterwards, even with the consent of the parties, be made a rule of Court unless that was a term of the agreement (*s*).

The Court of Probate will not recognize an agreement for an executor to renounce. Therefore, where at the trial at the Assizes of issues in a testamentary suit the suit was compromised on certain terms, *inter alia*, that two of the executors named in the will should renounce, and that the agreement should be made a rule of Court, and these terms were embodied in an order of Nisi Prius, the Court refused to make the order a rule of Court (*t*).

Affidavits. *Evidence.*] The rules affecting affidavits are Nos. 51 to 58 of the Non-Contentious Rules, Nos. 80 to 86 of the Contentious Rules, and Nos. 64 to 71 of the District Rules, all inclusive.

Before whom to be sworn. The affidavits may be sworn in England before the Registrars, and District Registrars, surrogates who had power at the commencement of the C. P. A. 1857, to administer oaths, persons appointed by the Judge under the seal of the Court (*u*), and Commissioners for taking Oaths in Chancery (*x*).

Where a requisition had issued to persons in New South Wales, under the seal of the Prerogative Court of Canterbury, to swear an administration, it was held that the Court of Probate might decree administration on an affidavit sworn under such requisition (*y*).

An affidavit sworn before a notary abroad will not be admitted, unless it appears on affidavit that there was not at the place where it was sworn a British consul or other officer empowered by 18 & 19 Vict. c. 42, to take affidavits, and that a notary had by the law of such place authority

(*s*) *Evans v. Saunders*, 30 L. J.,
P. M. & A. 184.

(*t*) *Hargreaves v. Wood*, 32 L.
J., P. & M. 8; 2 Sw. & Tr. 602.

(*u*) P. C. A. 1857, s. 27.

(*x*) P. C. A. 1857, s. 45.

(*y*) *Bedwell, In goods of*, 27 L.
J., P. & M. 8.

to take affidavits; an affidavit in which the addition or place of abode of a deponent is not inserted will not be admitted (*z*). Affidavits.

But this decision seems now overruled; for the Court admitted a declaration on oath made in the presence of a notary public in France, although it was not shown that none of the authorities mentioned in the statute 18 & 19 Vict. c. 42, were resident in the place (*a*).

Where the administrator's oath and affidavit for Commissioners of Inland Revenue were prepared in England and sent to New Zealand to be sworn by the widow of a deceased; when they reached New Zealand she had gone to reside at Hobart Town, whence they were returned to England duly sworn, but in them were interlineations which had been inserted in consequence of the widow's change of residence, and against which the Judge, before whom they were sworn, had not set his initials; the Court, under Rule 58 of the new Rules in Non-Contentious Business, allowed the oath and affidavit to be filed. The deponent in an affidavit was described as "the lawful widow and relict of the said deceased:"—Held that it was a sufficient description of her as widow (*b*).

Where an executrix, in the oath for executors, was described as "the lawful widow and relict of the deceased," this was held a sufficient description of her as a widow (*c*). Description.

The affidavits, as soon as the contentious business has begun, must no longer be entitled "In the goods of the deceased," but in the cause (*d*). Title of.

The sections in the statute (C. P. A. 1857) relating to evidence generally, are sections 24, 25, 26, 31, 32 and 33. Oral.

By the last-mentioned section it is provided that the rules of evidence observed in the Superior Courts of Com- Evidence.

- (*z*) *Bernard, In goods of*, 31 L. J., P. & M. 14; 2 Sw. & Tr. 621.
 J., P. & M. 89; 2 Sw. & Tr. 489. (*c*) *Morgan, In goods of*, 32 L. J., P. & M. 139.
 (*a*) *Lambert, In goods of*, 35 L. J., P. & M. 64. (*d*) *In the goods of Spillesy*, deceased, 5 L. T., N. S. 248, Ir. Pro.
 (*b*) *King, In goods of*, 32 L. J.,

Evidence. mon Law at Westminster shall be applicable to and observed in the trial of all questions of fact in the Court of Probate (*e*).

Oral evidence. Section 31, C. P. A. 1857, regulates the mode of taking evidence in contentious matters; providing generally for the examination of witnesses in open Court, but giving the Court a latitude to allow the cases to be verified, in whole or part, under certain conditions, by affidavit (*f*), a power which the Court exercises very sparingly.

Witnesses. The Court of Probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after, or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; and the Court may by writ require such attendance and order to be produced before itself or otherwise, any deeds, evidences or writings in the same form, or as nearly as may be, as that in which a writ of *subpœna ad testificandum* or of *subpœna duces tecum* is now issued by any of her Majesty's Superior Courts of Law at Westminster, and every person disobeying such writ shall be considered as in contempt of the Court, and also be liable to forfeit a sum not exceeding one hundred pounds (*g*).

Enforcing attendance, &c. Section 25, C. P. A. 1857, arms the Court with the powers of the High Court of Chancery to enforce the attendance of persons and the production of documents (*h*).

Order to bring in papers. Section 26, C. P. A. 1857, provides that *whether a suit be pending or not*, the Court may order persons to bring testamentary papers into the registry; or if there are reasonable grounds for believing that a person has knowledge of any testamentary paper, even though it is not

(*e*) C. P. A. 1857, s. 33.

(*g*) C. P. A. 1857, s. 24.

(*f*) C. P. A. 1857, s. 31.

(*h*) C. P. A. 1857, s. 25.

shown to be in his possession, may direct him to be examined in open Court or by interrogatories; and arms it with powers to punish the disobedient(*i*).

The Court of Probate has power to order any document sufficiently described and shown to be material to the inquiry going on before it, to be brought into the registry, and also to order either party to file additional affidavits as to scripts(*j*); it has also probably a more extensive power to make general orders as to the discovery and inspection of documents, but the exercise of that power must be regulated by fixed rules sanctioned by the Lord Chancellor under 20 & 21 Vict. c. 77, s. 30(*k*).

Order to bring in documents.

The Court has power under 20 & 21 Vict. c. 77 (C. P. A. 1857), s. 26, to order a party to the suit to file an affidavit, setting out what letters written to or by the deceased, or by his direction, are in the custody or under the control of such party, even although the letters are not distinctly affirmed to have reference to the testamentary intentions of the deceased. Discovery is a purpose auxiliary to the trial of a question of fact(*l*).

Discovery.
C. P. A. 1857,
s. 26.

The Court will not under 20 & 21 Vict. c. 77 (C. P. A. 1857), s. 26, order the attendance for examination in open Court of the attesting witnesses to a will, because they may have declined to give information as to the circumstances attending the execution of the same(*m*).

Witnesses.
C. P. A. 1857,
s. 26.

A party having been brought before the Court under 20 & 21 Vict. c. 77 (C. P. A. 1857), s. 26, to be examined, as to her knowledge of the testamentary papers of the deceased, counsel was permitted to attend on her behalf, to put questions to her, and also to the other persons, who had been required to attend on the same inquiry(*n*).

(*i*) C. P. A. 1857, s. 26.

Prob. 476.

(*j*) C. P. A. 1857, s. 24.

(*m*) *Evans v. Jones*, 36 L. J., P. & M. 70.

(*k*) *Peacock v. Lowe*, 36 L. J., P. & M. 91.

(*n*) *Cope, In goods of*, 36 L. J., P. & M. 83.

(*l*) *Hunt & Golbed v. Anderson*, 37 L. J., P. & M. 27; 1 L. R.,

Commission.

Section 32 gives the Court power to issue commissions, or give orders for the examination of witnesses abroad or who are unable to attend, and confers on it generally the authority of the 13 Geo. 3, c. 63, and the 1 Will. 4, c. 22 (*o*).

When a motion is made for an order, for a commission to examine witnesses abroad, in a suit for a declaration of legitimacy, the affidavit, on which the motion is founded, should set out the names of the witnesses whom it is proposed to examine (*p*).

Elderly person.

Where the will purported to have been executed in the presence of two attesting witnesses; one was abroad, the other in England; the executors, who propounded the will, applied for a commission for the examination *de bene esse* of the second attesting witness, who was resident in London; the affidavit alleged no physical infirmity, but described him as an "elderly person." The Court ordered the commission to issue, but intimated that if it were proposed at the trial to read the evidence taken under it, strict proof of inability to produce the witness would be required (*q*).

In a testamentary suit pending in the Court, an order was made on the application of the executors, the plaintiffs, for the examination *de bene esse* of the surviving attesting witness to the will, upon affidavit which stated that he was sixty-five years of age, and that the plaintiffs could not safely proceed to trial without his evidence, but were silent as to his then state of health (*r*).

Where a party in the cause dies prior to the execution of a requisition for examination of witnesses abroad, the examination must recommence from the date of the party's death (*s*). This is obvious, as any evidence taken after

(*o*) C. P. A. 1857, s. 32.

(*r*) *Brown v. Brown*, 38 L. J.,

(*p*) *Ryves & Ryves v. Att.-Gen.*,

P. & M. 78.

1 L. R., Prob. 23.

(*s*) *Best v. Finlay*, 1 No. of Ca.

(*q*) *McPherson v. Parnell*, 40

512.

L. J., P. & M. 30.

the death of a party, was evidence in a suit which had Evidence. abated and as such useless.

To prove a will in the Court of Probate it is not necessary that both the attesting witnesses should be examined (*t*). Attesting witness, both need not be called unless first gives evidence against.

But where the party propounding a will in a contested suit called one of the attesting witnesses, who gave evidence against the due execution, the Court held that he was bound to call the other attesting witness (*u*).

An executor having produced one of the attesting witnesses to the will in dispute, who failed from mental incapacity, or some other cause, to give a rational account of the time and manner of execution, called the second witness; the second witness deposed that the testator did not sign his name or acknowledge his signature, in the presence of two witnesses present at the same time:—Held, that though the second witness could not be considered a hostile witness, yet, as he was produced to satisfy the requirements of the law, the party producing him might put questions to other witnesses, tending to throw doubts upon his general credibility (*x*). Discrediting witness.

A party propounding a will is bound to call one at least of the attesting witnesses, if he can be produced, to prove the due execution, and if such witness fails to prove the due execution he is bound to call the other, although he may know him to be an adverse witness; if an attesting witness, called by a party propounding a will, gives evidence against the will, the party calling him may produce evidence to disprove such of the facts stated by him as are material to the issue, and to prove that he has made statements inconsistent with his evidence, although he has denied having made such statements, and he is not a hostile witness (*y*). Attesting witness.

- (*t*) *Belbin v. Sheats & Ward*, P. & M. 159.
 27 L. J., P. & M. 56. See also (*x*) *Coles v. Coles*, 35 L. J., P. & M. 40.
Forster v. Forster, 33 L. J., P. & M. 113. (*y*) *Coles v. Coles & Brown*, 1
 (*u*) *Owen v. Williams*, 32 L. J., L. R., Prob. 70.

B.

X

Evidence. Where testator made his will, which purported to be
 Attesting witness. witnessed by B., an attorney, and H., his clerk; on the
 death of the testator, B. made an affidavit, in order that
 the executors might obtain probate in common form, as to
 interlineations and the due execution of the will, and this
 affidavit was filled in by H. who knew its purport; B.
 died about a year afterwards; H. then stated, for the first
 time, that the will was not witnessed in the presence of the
 deceased, and there was no evidence the other way, the
 Court not being satisfied, under all the circumstances, with
 the evidence of H., declined to act upon it, and pronounced
 for the will (a).

Presumption
 of death. In December, 1846, A., who was then abroad, was last
 heard of; in September, 1854, B. died, and A., if then
 alive, would have become entitled to a share of her res-
 iduary personal estate, and such share was paid by B.'s
 executors into the account of the Accountant-General of
 the Court of Chancery; A. had no other personal property
 in England; upon application by the next of kin of A. for
 general administration:—Held that as A. never acquired
 a vested interest in B.'s residuary estate, the presumption
 of his death having arisen at the end of seven years from
 the time when he was last heard of, and, consequently,
 prior to September, 1854, and had no other personal prop-
 erty in England, the Court had no jurisdiction to grant
 general administration, but that administration, limited to
 attend and substantiate proceedings in Chancery, might
 be granted (b).

No presump-
 tion of date of
 death. Though a person, unheard of for seven years, is pre-
 sumed to be dead, there is no presumption as to the date
 of his death during that time. For where E. H. died in
 February, 1857, leaving a will made in January, 1857:
 the deceased's husband had left New York for Albany, on
 the 9th April, 1850, since which time, though inquiries had

(a) *Wright v. Rogers*, 38 L. J., (b) *Turner, In goods of*, 33 L.
 P. & M. 67. J., P. & M. 180.

been made for him there and elsewhere, nothing had been heard of him; on motion for probate of the will of E. H. as having died a widow:—Held that the husband of E. H. not having been heard of for more than seven years, might, under the circumstances, be presumed to have died before his wife, as there was no legal presumption that his death took place at the end of seven years, and that, consequently, the will of E. H. was valid (c).

Evidence.

Presumption of death.

N., intending to come to England, sailed on 1st July, 1856, from New Zealand in a ship bound for Sydney; the ship never arrived at Sydney, nor was anything ever heard of her or the crew after she set sail; some heavy gales having occurred at the time she would have been on her voyage and in her direct course, it was supposed she had foundered with all hands; advertisements had not been inserted in the newspapers for information concerning N.; it was held, that, under the above circumstances, as N.'s history was traced up to a certain point, and he was then lost sight of, advertisements were unnecessary, and that his death was to be presumed (d), this motion was made 28th January, 1858.

Presumption of death, after two years.

On the 27th of January, 1857, M., master of the ship B., sailed in her from L. for V., the average duration of the voyage being ten weeks; the ship never arrived at V., and nothing having been heard or seen of her or of any of her crew, since she sailed from L., the underwriters had paid as for a total loss of the ship: it was held, the death of M., in or since January, 1857, might be presumed. This motion was made the 28th January, 1858 (e).

After one year.

Payment by underwriters.

But, although payment by the insurers may presuppose a total loss of the *ship*, it does not follow that all the *crew* are drowned; and inquiries, in general, should be made at the port of departure for any of the missing crew. For, where on the 15th November, 1857, G. S. sailed from

Does not prove death of crew.

(c) *How, In goods of*, 27 L. J., P. & M. 4; 1 Sw. & Tr. 6.
 P. & M. 37; 1 Sw. & Tr. 53. (e) *In goods of Main*, 27 L. J.,
 (d) *In goods of Norris*, 27 L. J., P. & M. 5; 1 Sw. & Tr. 11.

Evidence.
Presumption
of death.

Inquiries at
port of de-
parture.

Barcelona to Constantinople, the average duration of the voyage being thirty days: and the vessel had never arrived at her destination, nor had anything since been heard of her or her crew, and the insurers had paid as on a total loss; administration was refused to the effects of G. S., as it did not appear that any inquiries had been made for the crew at Barcelona; but was allowed conditionally on an affidavit of such inquiries having been made without result, being filed in the registry (*f*). Motion made 13th November, 1858.

Where A., master of the X., sailed in her from Demerara on the 23rd of October, 1858, bound for London, the ordinary duration of the voyage being five or six weeks; a few days after sailing, a hurricane passed over the West Indian Islands, in which it was supposed the X. and all hands had been lost, neither the vessel nor any of the crew having been heard of since the vessel sailed: the underwriters on the vessel had arranged to pay the amount insured, as upon a total loss: on affidavits of these facts, a motion made on the 30th March, 1859, for a grant of administration of the effects of A. was rejected, the Court holding that the application was premature; since, though the vessel might be lost, the crew might have been picked up by a vessel bound on so long a voyage, that tidings of them could not have been received in the period that had elapsed since the vessel was last heard of; and, further, that inquiries should have been made at Demerara for the crew; but on the 22nd June, 1859, the underwriters having then paid the amount insured on the vessel, and nothing having been heard of either her or any of the crew, administration was granted (*g*).

In September, 1859, the presumption arose that A., who had not been heard of for seven years, was dead; but there were no circumstances from which the date of his

(*f*) *Smyth, In goods of*, 28 L. J., P. & M. 1; see also *Bennet, In goods of*, *ibid.* *notis.*

(*g*) *Bishop (Henry), In goods of*, 28 L. J., P. & M. 93; 1 Sw. & Tr. 303.

death could be inferred; in 1857, his father, who would have been entitled to administration, had he survived A., died intestate, and no administration was taken out to him; it being uncertain whether A. or his father survived; the Court, under the 73rd section of the Probate Act, granted administration of the effects of A., to his sister, without requiring administration to the father to be taken out. *Semble*, that, if there had been a legal personal representative of the father, the Court would have required his consent before making such a grant (*h*).

Evidence.
Presumption
of death.

Where W., his wife and an only child, an infant, were killed in the Cawnpore massacre, in June, 1857, and W. left no will: in the absence of any evidence as to survivorship, the Court granted administration of the personal estate of W., as having died a widower, to his next of kin (*i*).

Survivorship.

Where a husband and wife die by the same calamity, and there is no evidence that the one survived the other, administration of their personal estate will be granted to their respective next of kin (*k*).

In the Court of Probate an ambiguity on the face of a paper as to the *factum*; *e. g.*, whether a revocatory clause was intended to operate as a general or only as a partial revocation, lets in parol evidence (*l*).

Parol evidence.
Ambiguity.

Where testator appointed "his said nephew, Joseph Grant, executor of his will: his wife's nephew of that name had resided with him for many years, and managed his business: there was also living a nephew (a brother's son)" of the same name, both claimed probate of the will: —Held that parol evidence was admissible to show the relation and circumstances in which the respective parties stood to the testator, and the sense in which he habitually used the word "nephew" when speaking of his wife's

To explain.

(*h*) *Peck, In goods of*, 29 L. J., P. & M. 95.

(*k*) *Wheeler, In goods of*, 31 L. J., P. & M. 40.

(*i*) *Wainwright, In goods of*, 28 L. J., P. & M. 2.

(*l*) *Draper v. Hitch*; 1 Hag. Ecc. R. 677, note.

Evidence.

nephew, and the evidence showing that the wife's nephew was the person meant, probate of the will was decreed to him accordingly (*m*).

Ambiguity,
what is.

Testator by his will appointed "Francis Courtenay Thorpe, of Hampton, gentleman," one of his executors; the only person answering the description was a youth of twelve, the son of Francis Corbett Thorpe, of Hampton, gentleman, who, previous to the execution of the will, had been asked by the testator and consented to be one of his executors and trustees:—Held that there was no ambiguity to entitle the court to inquire into the intention of the testator so as to ascertain which of the two, the father or son, he meant to be executors (*n*).

To correct the
date.

Parol evidence is admissible to show that a will was executed on a date other than that which it bears (*o*).

Intention of
deceased.

The intention of a testator that a duly-executed paper writing should operate as a will, may be proved by parol evidence (*p*).

Testator executed a will and five codicils; the fourth codicil revoked the three first, and the fifth, after making an alteration in the will, in all other respects confirmed the said will and *four codicils*:—Held that there was sufficient ambiguity on the face of the codicils to render parol evidence admissible for the purpose of explaining it, and as it appeared by such evidence that the testator intended to confirm his will and fourth codicil only, and that by mistake of the copyist of the draft will, the words "*four codicils*" had been substituted in the engrossment for the words "*fourth codicil*," that the will and fourth and fifth codicils only were entitled to probate (*q*).

Of lost will.

The original will being lost and no copy in existence, a limited administration, with the will (contained in an affi-

(*m*) *Grant v. Grant*, 39 L. J., P. & M. 121.

P. & M. 17.

(*p*) *English, In goods of*, 3 Sw.

(*n*) *Peel, In goods of*, 39 L. J.,

& Tr. 586.

P. & M. 36.

(*q*) *Thomson, In goods of*, 35 L.

(*o*) *Raffell v. Raffell*, 35 L. J.,

J., P. & M. 17.

davit) annexed, may be granted to the widow, as executrix and residuary legatee for life, on her giving justifying security: the eldest son having been personally cited, two other children, minors and abroad, cited by a service on the Royal Exchange, and the remaining five consenting (r). Evidence.

G. made his will in 1855, appointing his wife sole executrix; in May, 1857, he fled from Delhi when the mutiny broke out, leaving there a desk containing the will; after the recapture of Delhi, an attempt was made to recover it, but without success: G. died in June, 1857: on proof of the due execution of the will, and of its contents, the Court granted probate to the executrix (s). Of missing will.

The 20th section of the Wills Act, and the 6th section of the Statute of Frauds, define how a will is to be revoked; it was held that the former statute did not prohibit the introduction of parol evidence to prove the fact of a will having existed subsequent to the will found on the death of the alleged testator, and that the execution of the second will of a different purport from the first, is by law a revocation of the first, though the second may not appear (t). Of lost revocatory will.

It is a presumption of law that a will never out of deceased's custody, and not appearing at his death, has been destroyed by the deceased (u). Presumption of destruction.

It must be this presumption which would allow parol evidence to be given of the *contents* of the second will, showing that its purport was different from the first will; otherwise it would be difficult to see how the contents of a written document could be given in evidence, not being in the possession of the opposite party, and without proof of its destruction.

Where G., in 1855, wrote his will on six or seven Where G., in 1855, wrote his will on six or seven Presumption of revocation.

(r) *Vallance v. Vallance*, 1 Hag. Ecc. R. 693.

(t) *Helyar v. Helyar*, 1 Lee, 472.

(s) *Gardner, In goods of*, 27 L. J., P. & M. 55.

(u) *Ibid.*

were inadmissible without previous proof of such marriage; secondly, that declarations by the deceased of her own illegitimacy were admissible (a). Evidence.
Declaration of
deceased.

Declarations by a testator that he had destroyed a will, the revocation of which is in issue, are inadmissible in evidence (b).

The declarations of a testator made after the execution of a will are not admissible as evidence of its contents (c).

Verbal declarations or written statements made by a testator, in and respecting the making of his will, preceding or accompanying acts done by him in relation thereto, are admissible in evidence, in order to show the quality and nature of such acts (d).

Trial.] See Rules 52 and 53, C. B., as to preparing the questions for the jury. The process for obtaining a jury is the same as in the Superior Courts of Law at Westminster (e). If, however, the cause is to be tried by a special jury, the practice is to obtain an office copy of the order, directing the mode of trial, and to take that to the Registrar, who will obtain the Judge's signature to a copy of it. This is then taken to the sheriff's office, the copy of the panel obtained from the sheriff's office should be forthwith filed with the clerk of the papers. Directions for
obtaining a
special jury.

Where an application for a certificate for the costs of a special jury was not made until three months after trial: the Court held that it was bound to exercise the powers conferred on it by the 36th section of the Probate Act (20 & 21 Vict. c. 77), with regard to trials by jury, subject to the same rules as the Common Law Courts, and, therefore, under the 34th section of the Jury Act (6 Geo. 4, c. 50), refused the application as being too late (f).

(a) *Queen's Proctor v. Williams*, 31 L. J., P. & M. 157; 2 Sw. & Tr. 491.

(b) *Staines v. Stewart & another*, 31 L. J., P. & M. 10; 2 Sw. & Tr. 320.

(c) *Quick v. Quick*, 33 L. J., P.

& M. 146; 2 Sw. & Tr. 442.

(d) *Johnson v. Lyford*, 37 L. J., P. & M. 65.

(e) C. P. A. 1857, s. 36.

(f) *Skipper v. Skipper*, 29 L. J., P. & M. 133.

Hearing. The hearing of the cause shall be conducted in Court, and the counsel shall address the Court, subject to the same rules and regulations as now obtain in the Courts of Common Law (*g*).

Right to begin. "The *onus probandi* lies in every case upon the party propounding a will; and he must satisfy the conscience of the Court, that the instrument so propounded is the last will of a free and capable testator" (*h*).—Parke, B.

In a suit for revocation of probate, the party propounding the will must begin, though the plaintiff has declared, alleging an intestacy (*i*).

Several defendants. Where an executor propounds a will in solemn form, and there are several defendants, whose case on the pleadings is substantially the same, the Court will hear counsel only for one defendant (*j*).

Affidavits. The Court will allow affidavits in reply, to be read at the hearing of a cause, if it thinks such affidavits are necessary (*k*).

Verdict how far final. The Court is not bound to act upon the verdict of a jury that a testator did not intend a will or codicil to be operative, but must itself be satisfied of that fact, before pronouncing against it (*l*).

After the conclusion of the trial or hearing, the Registrar shall enter on the records the finding of the jury, or the decision of the Judge, in a form corresponding as near as may be with those given, Nos. 25 and 26 (Forms, C. B.), and shall sign the same (*m*).

Issue directed to the assizes. It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding

(*g*) Rule 57, C. B.

(*h*) *Barry v. Butlin*, 1 Curt. 638.

(*i*) *Cross v. Cross*, 3 Sw. & Tr. 293; 33 L. J., P. & M. 49.

(*j*) *Palmer v. Maclean & ano-*

ther, 1 Sw. & Tr. 149.

(*k*) *Cordeux v. Trasler*, 34 L. J., P. & M. 127.

(*l*) *Lister v. Smith*, 33 L. J., P. & M. 29.

(*m*) Rule 58, C. B.

under this act to be tried by a special or common jury by means of an issue to be directed to any of the Superior Courts of Common Law, in the same manner as an issue may now be directed by the Court of Chancery (*n*). Trial at assizes.

In every case where any Court of Law or Equity may desire to have any question of fact decided by a jury, it shall be lawful for such Court to direct a writ of summons to be sued out by such person or persons as such Court shall think ought to be the plaintiff or plaintiffs, against such person or persons as such Court shall think ought to be defendant or defendants therein, in the form set forth in the 2nd schedule to this act annexed, with such alterations or additions as such Court may think proper; and thereupon all the proceedings shall go on and be brought to a close in the same manner as is now practised under a feigned issue (*o*). This form is not obligatory, the old form of wager may still be adopted (*p*).

Where, on an application acquiesced in by all parties to the cause, to direct an issue in a testamentary suit to be tried at the assizes, it appeared from affidavits that the whole property did not amount to 300*L.*, the Court required that it should also appear that the personalty was not under 200*L.*, so as to show that the County Court had no jurisdiction (*q*). In what cases.

The consent of all parties that an issue in a testamentary matter should go down to the assizes is not sufficient: there must be an affidavit assigning reasons to the satisfaction of the Court (*r*).

The statute speaks of a "writ of summons," and gives its form in the 2nd schedule to the act. The term "writ Writ of summons.

(*n*) C. P. A. 1857, s. 35.

(*o*) 8 & 9 Vict. c. 109, s. 19.

(*p*) *Lizard v. Butcher*, 15 L. J.,

(*q*) *Dunn v. Dunn*, 30 L. J., P.

& M. 40.

(*r*) *Bull v. Bull*, *ibid.* *notis.*

C. P. 187; 2 Com. B. 858.

Trial at
assizes.

of summons" seems scarcely applicable, as it is in the following form :—

Form of writ
of summons.

In the Court of Queen's Bench ["Common Pleas" or "Exchequer," or in any inferior Court, as the case may be].

Middlesex to wit [or such other county as may be directed].

Whereas A. B. affirms and C. D. denies (*here state fully the fact or facts in issue*), and the Lord Chancellor (*or here the Judge of the Court of Probate*) is desirous of ascertaining the truth by the verdict of a jury, and both parties pray that the same may be inquired of by the country: Now let a jury, &c.

There appear to be no rules applying to issues thus directed; probably because as soon as the order is made, they leave, as it were, the Court of Probate and enter the jurisdiction of that Court to which they are directed, until the postea is returned.

Practical
directions.

Get a copy of the rule directing the issue, if necessary instruct counsel to settle draft issue. When the draft is prepared leave it with the opposite attorney, who, if he agree in it, will return it approved. If you are unable to agree with the opposite attorney as to the form of issue, take the rule and draft issue to the Registrar, who will make an appointment to settle it.

When the issue is settled and approved engross it on parchment. Take it then with the usual common law præcipe for a writ of summons to the Master's office of the particular Court in which the issue is to be tried. The clerk then will seal the engrossed issue; the stamp is 5s. Serve a copy of the issue, with due notice of trial endorsed, on the opposite attorney.

Notice of trial.

The rule may direct what notice of trial is to be given, but the usual notice is the regular ten day notice of trial for country causes; it will also direct the mode of trial,

and whether before a common or special jury. *If by a special jury, give the ordinary notice to the sheriff of the county, as in ordinary causes tried at the assizes. The record commences with a recital in the form given in No. 13, Forms, in C. B., stating how the cause began, whether by citation or warning, as the case may be, and proceeds with a transcript of the issue as delivered; it is engrossed on parchment, and it is presumed, that any particulars should be annexed to it in the same way as to a Nisi Prius record. Similarly annex the jury panel.*

Trial at
assizes.

Send the record with these documents annexed to the attorney in the country who conducts the cause, if there be one, if not, to any attorney in the country; he will take them to the marshal at his lodgings in the assize town, and will enter the cause with him. The subpœnas are issued out of the Court where the issue is to be tried, and therefore must be tested in term.

The plaintiff has the carriage of the suit, but if the defendant be desirous of bringing the cause to a trial he may move the Court to which the issue is directed to be at liberty to carry the record down to trial at the next assizes, if he has reason to suppose that the plaintiff wishes to delay, and the Court permitted a defendant to carry a record of an issue directed by Chancery down to trial, on a suggestion that the plaintiff intended to delay it (s).

By proviso.

Be careful to apply by letter to the Registrars of the Principal Registry to request them to direct the affidavits of scripts and testamentary papers in the cause to be sent to the District Registry nearest to the assize town, where the cause is to be tried; obtain, also, the consent of your opponent to allow the papers to be sent by post, and enclose his consent in your letter to the Registrars; otherwise the Registry will send a special messenger with the papers, thus greatly increasing the expense. If possible, notice should be given to the District Registry, whither the

Practical
directions.

(s) *Humpage v. Rowley*, 4 T. R. 767.

Trial at
assizes.
Practical
directions.

papers have been sent, of the day on which they will be required in Court, otherwise a clerk from the office will be attending each day and so increasing the expenses. The safest course, however, is to serve the officer to whom the testamentary papers are transmitted with a subpoena duces tecum, issued and tested in like manner as the other subpoenas. Otherwise it is difficult to see what remedy a party would have if the officer refused or neglected to attend. This will not prevent the sending, as a matter of courtesy and convenience, of the notice before mentioned.

Copies left in
Registry.

It must be remembered that the Principal Registry will not thus transmit through the post the testamentary papers until examined copies (which they themselves always prepare) have been made and paid for, to be left in the Principal Registry in case of the loss of the originals. If, therefore, the testamentary papers are long or numerous, some delay on this account must be taken into consideration.

In the Court of Chancery, it seems that if the plaintiff do not proceed to trial by the time directed, the defendant may in the next subsequent term move that Court that the matters in issue at Common Law be taken *pro confesso* (t). It is not probable that the Court of Probate would act in the same way, but would refuse to follow the precedent of the Court of Chancery in this. It would, however, probably follow it in the practice of condemning the plaintiff in the costs for not proceeding to trial, unless good cause were shown.

Trial, post-
ponement of.

Defendant moved for the postponement of a trial from the spring to the summer assizes, on the ground that a material witness for the plaintiff, whom the defendant wished to cross-examine in Court, would be prevented by illness from being present at the trial; the Court rejected the motion, as it appeared that the witness would probably die before the summer assizes, and no advantage would,

(t) *Casborne v. Barsham*, 5 M. & C. 113; *Johnson v. Todd*, 3 Beav. 218.

therefore, be gained by the postponement. *Quære*, whether the unavoidable absence at the trial of a witness whom the applicant does not intend to call, but wishes to cross-examine, if called by the other side, is any ground for postponing the trial (*u*). Trial at
assizes.
Postponement.

Where in the Court of Chancery, a decree directs an issue to be tried at the next assizes, an application to postpone the trial, on account of the illness of a material witness, must be made to the Court which directed the trial (*x*).

Nevertheless, when the cause is entered, the record comes down to *Nisi Prius*, the Judge there is in possession of it, and an application may be made to him to put the trial off (*y*).

The cause takes its place in the list and comes on in its turn in the same way as the other causes at the assizes. In issues directed by the Court of Chancery, the decree may also direct that certain matters be admitted; and, *semble*, in issues directed by the Court of Probate, the Judge at the trial will take notice of the terms of the order by which the issue is directed. Where issues of *devisavit vel non* were directed by the Master of the Rolls, who ordered that they should be tried by a special jury, but that none of the special jury should reside within twelve miles of G. (the assize town), there was no order as to the talesmen, only eight special jurors appeared: the plaintiff's counsel prayed a *tales*, but the other party objected. The Judge would not grant a *tales*, on the ground that there being no order of the Master of the Rolls as to the talesmen, and their residing within twelve miles of G. being no legal ground of challenge, the talesmen could not be asked on the *voir dire* as to their residences; and that if any of them did reside within twelve miles of G., the Master of the Rolls would probably order a new trial on that ground; the trial, therefore, stood over till the next assizes (*z*).

(*u*) *Williams v. Henry & others*, 33 L. J., P. & M. 110. (*y*) *Buxton v. Lantton*, 4 Camp. 163.
(*z*) *Wood & others v. Thompson*, Car. & M. 171.
(*x*) *Kebel v. Philpot*, 9 Sim. 614.

Trial at
assizes.

The plaintiff is entitled to begin, on the ground, that in such issues it will be presumed that the party ordered to be plaintiff was intended to begin (*a*).—Erskine, J.

It must, however, be remembered that the titles of plaintiff and defendant in the Court of Probate are sometimes misleading, see Rule 33, Con. B. 1862; it would seem to be that in such proceedings the more correct term would be “affirmant” or “party declaring.”

In issues directed by the Court of Chancery, the plaintiff may elect to be nonsuited, as in ordinary cases (*b*). But *quære*, whether he may be nonsuited in issues directed by the Court of Probate, as see below.

Bill of
exceptions.

Upon the trial a bill of exceptions will not lie; but the regular course is to apply to the Court, which directed the issue, for a new trial; the Court of Chancery, however, will, on the waiver of the parties, allow a verdict on an issue to be made the subject of a proceeding in error (*c*).

There are certain fundamental principles of the Court of Probate which render issues directed by it liable to considerations which do not ordinarily attach to issues directed by other Courts. The judgment of the Probate Court on a will is, in a measure, a judgment *in rem*, and it will not be bound by the assent or agreement of parties in the same manner as in cases where the judgment is strictly a judgment *inter partes*. It will from this appear that the parties to a suit cannot by mere consent clothe an imperfect document with the authority of a testamentary paper, but that in all cases evidence, which will justify the Court in so regarding it, must be produced at the hearing. Where, therefore, at a trial at the assizes on such an instrument, parties come to terms or agree to a verdict, the Court of Probate, when a motion is subsequently made to grant or refuse probate, as hereafter shown, will

(*a*) *Frank v. Frank*, 2 Moo. & Rob. 314. 164.
(*c*) *Clayton v. Nugent*, 8 Jur. 867.
(*b*) *Burnes v. Headley*, 1 Campb. 867.

decline to recognize any such verdict, unless evidence has been produced sufficient to justify such grant or refusal (*d*). Trial at assizes.

Where the verdict is found, the postea is indorsed on the record as in ordinary cases, but it is not necessary to enter up judgment. The postea must be signed by the associate at the trial (*e*): the associate then generally himself forwards the record up to his London agents, to whom application should be made for it by the successful party, who should also direct the testamentary papers to be sent from the District Registry back to the Principal Registry, as these must be returned into the Registry before the motion can be made for a grant, or as the case may be, by the successful party, who must also file the record, with postea thereon, indorsed and signed as above in the Registry, with his case for motion. Postea.

After the trial, however, the contentious proceedings may be at any time discontinued by order on summons, and the grant obtained by a Registrar's order, as in common form proceedings.

County Court.] The enactments relating to the jurisdiction of the county courts are 20 & 21 Vict. c. 77, ss. 55, 56, 57, 58, 59, 60, and 21 & 22 Vict. c. 95, ss. 10, 11, 12, 13; see Appendix I., and County Court Rules, see Appendix II.

In estimating the value of the real estate to which a deceased was entitled at the time of his death, for the purpose of deciding whether the county court has jurisdiction, charges upon such estate cannot be taken in consideration. If the estate be of the value of 300*l.*, but the value of the deceased's interest in it is reduced by mortgage to less than 300*l.*, the county court has no jurisdiction (*f*). County court jurisdiction.

The county court has no jurisdiction over a probate suit where the deceased died seised or beneficially entitled to

(*d*) See Williams on Executors, P. & M. 39.
6th ed., pp. 316, 317.

(*f*) *Davies v. Brecknell*, 40 L. J., P. & M. 15.

(*e*) *West v. Goodrick*, 31 L. J.,
B.

County court
jurisdiction.

real estate of the value of 300*l.*, although the persons interested in the realty have not been cited (*h*).

When contentious proceedings in a testamentary suit are referred by the Court of Probate to a county court, the Court of Probate has no further jurisdiction, except by way of appeal, over such proceedings (*i*).

New Trial or Rehearing.] See Rules 59 and 60, C. B. The expression, new *trial*, alludes to those cases where the original trial was before a jury. *Rehearing*, where it has been heard before the Judge without a jury.

New Trial.] Where an issue had been tried at the assizes, it was held that the parties were not bound by the 35th Rule (1858), which directs that an application for a new trial must be made within ten days of the trial, or at the first sitting of the Court after the trial (*h*).

The hearing of a motion for a new trial upon affidavits, if formally made in time will be postponed, when there has not been sufficient time to procure the necessary affidavits (*l*).

County court.

The Court of Probate has no power to order a new trial of a cause commenced in, or transferred to, a county court. The only mode in which the decree of a Judge of a county court can be reviewed, is by appeal, under section 58 of Court of Probate Act, upon points of law, and the admission or rejection of evidence. Upon questions of fact, the decision of the county court is final (*m*).

Appeal.] See Rules 87 and 88, C. B., the notice of appeal does not operate as a stay of proceedings, without an order from the Judge to that effect.

At the trial of issues in a testamentary suit, the jury found that the residuary clause in the will had been obtained by undue influence, whereupon the Court pronounced

(*h*) *Thomas v. Nurse*, 39 L. J., L. J., P. & M. 163.
P. & M. 80.

(*i*) *Macleur v. Macleure*, 37 L. P. & M. 43.
J., P. & M. 68; 1 L. R., Pro. 604.

(*h*) *Charlton v. Hindmarsh*, 29 P. & M. 127; 1 L. R., Pro. 195.

(*l*) *Young v. Dendy*, 36 L. J.,

(*m*) *Zeally v. Veryard*, 35 L. J.,

for the will, exclusive of the residuary clause, but suspended the delivery out of probate, in order that an application for a new trial might be made: a rule for a new trial having been discharged, the plaintiff, who intended to appeal against the decree, asked for leave to appeal against the order discharging the rule:—Held that no such leave was necessary, as the order being interlocutory, it would be under appeal on the appeal against the decree (*n*). Appeal.

Where a party is actually in contempt, but the contempt is waived, he is not precluded from appealing to a superior court (*o*). By party in contempt.

Enforcing Orders, &c.] The Court of Probate has, under the 25th section of the 20 & 21 Vict. c. 77, the like powers, jurisdiction, and authority for enforcing its orders, decrees and judgments as are by law vested in the Court of Chancery, but the limit of this authority must be found in the powers exercised by the Court of Chancery prior to the passing of the 1 & 2 Vict. c. 110. The Court of Probate does not possess the additional powers and authority indirectly conferred upon Courts of Equity for the enforcing of their orders by that statute.

Where, therefore, large sums of stock stood in the books of the Bank of England in the name of an unsuccessful defendant in a testamentary suit, who admitted that he held the stock as executor and trustee for the original defendant, and who was condemned in the costs of the suit as executor and party, the Court refused to give effect to a writ of sequestration for payment of the costs, by granting an order on the Bank of England to pay into Court the dividends on the stock in question, an adverse order never having hitherto been made by a Court of Equity, on a third party to pay over to a creditor, money which he owes to the debtor (*p*).

(*n*) *Smith v. Atkins*, 39 L. J., No. of Ca. 303.

P. & M. 78.

(*p*) *Crispin v. Cumano*, 38 L. J.,

(*o*) *Harrison v. Harrison*, 1 P. & M. 28; 1 L. R., Pro. 622.

Enforcing
orders, &c.
Attachment.

An executor, cited by a creditor to take probate of a will, and assigned to do so, cannot be pronounced in contempt for non-compliance with the assignation, at the suit of the creditor (*q*).

Where the executors of a will intermeddled in the estate and effects of their testator, without taking probate of the instrument, a citation having been served upon them to enter an appearance and take probate, they entered an appearance but took no further steps in the matter. The Court refused to grant an attachment against them for contempt in not obeying the citation, but directed a peremptory order to be served upon them to take probate within ten days from the date of the order (*r*).

Against mar-
ried woman.

The Court will not issue an attachment against a married woman, who has no separate property, for not obeying an order for the payment of money (*s*).

An attachment will not be granted against a married woman for disobedience of an order for payment of costs if she has no separate property. But the onus of establishing that fact lies upon her, and if she does not appear upon a motion for an attachment, of which she has had notice, the Court will grant the attachment (*t*).

But a married woman may be attached for non-compliance with a citation, calling upon her to file an inventory in the registry, of an estate, of which she is administratrix (*u*).

On subpoena to
bring in will.

The Court granted an order for an attachment against A. for disobedience of a subpoena, to bring in a will; but directed that the attachment should lie in the registry for eight days after notice to A. of its having been issued,

(*q*) *Watson v. Tomkins*, 1 No. of
Ca. 313.

(*r*) *Mordaunt v. Clarke*, 38 L.
J., P. & M. 45.

(*s*) *Harris v. Bradbury*, 31 L.

J., P. & M. 86; 1 Sw. & Tr. 459.

(*t*) *Parker v. Hick*, 33 L. J., P.
& M. 154; 2 Sw. & Tr. 426.

(*u*) *Baker v. Baker*, 2 Sw. &
Tr. 380.

before proceedings should be taken to enforce it: the application for such an attachment is contentious business (*x*). Enforcing orders, &c.
Attachment.

When a subpoena has been personally served upon an individual to bring in a testamentary paper and such individual fails to comply therewith, the Court will not at once order an attachment to issue against him, but will make a preliminary order that he shall attend in Court to be examined in reference to his possession of such paper (*y*).

As a general rule, an attachment for disobeying an order of the Court will not be granted unless the order has been personally served. An order that a defendant "as administratrix of the effects of the deceased" do pay the plaintiff's costs of a suit is tantamount to an order that such costs should be paid out of the estate, and does not render the plaintiff personally liable: where, therefore, such an order was made, and there were no assets, the Court refused an attachment for non-payment of the plaintiff's costs: money deposited in a bank by a husband in the joint names of himself and his wife, as a provision for her in case of his death, upon his death becomes the absolute property of the wife (*z*). Personal service of order.

An administrator in custody under an attachment, obtained by the persons entitled in distribution, for not filing an inventory, is not entitled to be discharged from custody, upon his filing such inventory except on payment of costs (*a*).

Where damages and costs are not paid pursuant to an order of the Court, leave will be granted to issue a *fi. fa. facias* under sect. 52 of 20 & 21 Vict. c. 85 (*b*). Fi. fa.

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| (<i>x</i>) <i>Simmons v. Deane</i> , 27 L. J., P. & M. 103. | P. & M. 127; 2 Sw. & Tr. 437. |
| (<i>y</i>) <i>Parkinson v. Thornton</i> , 37 L. J., P. & M. 3. | (<i>a</i>) <i>Marshman v. Brookes</i> , 32 L. J., P. & M. 95. |
| (<i>z</i>) <i>Williams v. Davies</i> , 33 L. J., | (<i>b</i>) <i>Reed v. Reed</i> , 29 L. J., P. & M. 158. |

Costs.] See C. P. Act, 1857, sect. 96, and C. P. Act, 1858, sect. 28, and Rules Non-Con. 88 to 91, D. R. 99, 100, and C. B. 92 to 95, all inclusive; see also Rules 4, 5 and 6, C. B., as to the liabilities of executors, next of kin, and interveners.

Taxation.

In taxing the costs of a trial in a testamentary suit, the Registrar is not bound by the practice of the Prerogative Court, which was to allow the fees of only two counsel at the hearing, but may exercise his discretion as to the number of counsel to be allowed (*c*).

In taxing the costs of a trial, the Registrar has a discretion as to the number of witnesses and number of counsel whose expenses and fees should be allowed; the expenses of only one consultation are usually allowed (*d*).

When issues are found distributively, the party condemned in costs is not liable for costs of issues found in his favour if separable from the other costs (*e*).

When the costs of an unsuccessful party to a testamentary suit are directed to be paid out of the estate, they are not taxed on so liberal a scale as between proctor and client (*f*).

County court trial.

Where the issues raised in a suit in the Court of Probate have been directed to be tried by the Judge of a county court, the Judge of the Court of Probate will decide any questions as to the costs of those issues, and the costs of those issues will be taxed in the Principal Registry (*g*).

Who may be condemned in.

It seems that the guardian of a minor instituting a suit cannot be condemned in the costs incurred (after a proxy has been exhibited) on behalf of a party then become of full age (*h*).

(*c*) *Braine v. Braine*, 29 L. J., P. & M. 151; 1 Sw. & Tr. 271.

(*d*) *Edwards v. Payne*, 29 L. J., P. & M. 145; 1 Sw. & Tr. 276.

(*e*) *Rayson v. Parton*, 39 L. J., P. & M. 20.

(*f*) *Jeffery v. Jeffery*, 28 L. J., P. & M. 43.

(*g*) *Thomas v. Crowther*, 2 Sw. & Tr. 501.

(*h*) *Green v. Proctor & Newey*, 1 Hag. Ecc. R. 337.

Where a testamentary suit having been instituted against a married woman without making her husband a party to it, she propounded a will knowing that it had not been duly executed, the Court pronounced against the will and condemned her in costs (*i*).

Costs.
Who may be
condemned in.
Feme covert.

An order on a person as administrator to pay costs, is equivalent to an order to pay out of the deceased's estate; and, if the assets have been properly exhausted, no attachment will be granted for disobedience to such order. *Semble*, an administrator might be guilty of such misconduct as to make him personally liable for costs, but mere delay in taking out administration is not such misconduct (*k*).

Administrator.

Where an attorney propounded, as executor, a will, which purported to be attested by two of his clerks, the next of kin pleaded in opposition to the will, issue was joined, and the case came on for trial before a jury: on the morning of the trial the counsel for the executor stated that the executor would consent to a verdict for the defendant, in the absence of a satisfactory explanation by the plaintiff of the circumstances under which the will had been propounded and withdrawn: the Court condemned him in the costs of the suit (*l*).

Executor.

A nude executor who, without reasonable ground, propounds a testamentary paper, is liable for costs: an executor, if he has any doubt as to the validity of a testamentary paper, should, before propounding it, take security for his costs from the persons interested (*m*).

Nude executor.

A will and two codicils having been propounded by executors, W., who was also an executor under the will, disputed the validity of the second codicil, pleading first,

Heir-at-law.

(*i*) *Clarkson v. Waterhouse*, 29 L. J., P. & M. 136; 2 Sw. & Tr. 378.

(*l*) *Richards v. Humphreys*, 29 L. J., P. & M. 137.

(*m*) *Rennie v. Massie*, 35 L. J., P. & M. 124.

(*k*) *Williams v. Davies*, 3 Sw. & Tr. 437.

Costs.

Who may be
condemned in.

Heir-at-law.

fraud; secondly, undue influence; thirdly, that the testator was ignorant of its contents. The heiress-at-law, being cited to see proceedings, entered a caveat against the will and first codicil, and on this being warned, pleaded in opposition to the will and both codicils, first, incapacity, secondly, undue influence. All these issues being found by a jury in favour of the executors, the Court pronounced for the will and codicils, and in general terms condemned the defendants in costs. On motion on behalf of the heiress-at-law to vary this decree as to costs:—Held first, that an heir-at-law cited to see proceedings if he plead but does not prove such pleas in opposition to a will is, with respect to his liability for costs, in a position analogous to that of the next of kin in the Prerogative Court, who, not content with putting the executors on proof of the will, had brought in an allegation and had failed to prove it, and, therefore, that the heiress-at-law was liable for the costs incurred since the entry of the caveat by her. Secondly, that the costs ought to be distributed by taxing against the heiress-at-law such portions of the costs of the briefs and witnesses as belonged to the issues raised by her as to the will and first codicil from the date of her caveat, and against W. the costs of such part as related to the second codicil, and that when costs had been incurred in any matter equally applicable to both parties, so that they could not be assigned to one more than to the other, they should be taxed equally between them (n).

Successful
party.

Where an executrix propounded a will which had been lost through her negligence, and substantially succeeded in this suit:—Held first, that as the litigation was rendered necessary by her negligence, the costs of the next of kin should be paid by her, and not out of the estate; secondly, that as she would have had a right, if the will had not

(n) *Fyson & others v. Westrope & others*, 29 L. J., P. & M. 139; 1 Sw. & Tr. 279.

been lost, to prove it in solemn form, she ought to be allowed out of the estate such costs as she would have incurred in so proving it (o). Costs.
Who may be
condemned in.

In decreeing probate of the contents of a destroyed will, the Court condemned in costs a defendant who had destroyed the will, although he had not entered an appearance (p). Party not ap-
pearing.

W. J., having obtained probate in common form of a paper professing to be the will of A. L., such probate, at the suit of the next of kin of the deceased, was revoked, the Court holding that the paper in question was not the will of the deceased, and that W. J. had been guilty of fraud in obtaining probate of it, and in contesting the suit. W. J., though suing *in formâ pauperis*, was condemned in the costs of the suit (q). Pauper.

An heir-at-law, who intervenes in a suit and opposes a will, is entitled to costs if the will is pronounced against (r). Who entitled
to.
Heir-at-law.

B., acting really in the interest of an infant residuary legatee, succeeded in establishing a will, under which she herself only took a trifling legacy; the executor having refused to propound the will; the Court held, that the circumstances of the case were such as to warrant the opposition to the will, and at first refused to make any order as to costs, but on the representation that B. was not primarily entitled to the grant with the will annexed, and so might never be in a position to repay herself the expenses of the suit, it ordered her costs to be paid out of the estate (s). Costs out of
estate.
Who entitled
to.
Legatee.

Where a next of kin defendant successfully opposed, on the ground of undue influence exercised by the executors Order refused
out of estate.

- (o) *Burls v. Burls*, 36 L. J., P. & Tr. 21.
& M. 125.
(p) *King v. Gaillard*, 37 L. J., P. & M. 20.
(q) *Carless v. Thompson*, 1 Sw. & Tr. 62.
(r) *Rayson v. Parton*, 39 L. J., P. & M. 20.
(s) *Bewsher v. Williams & others*, 3 Sw. & Tr. 62.

Costs out of
estate.
Who entitled
to.

and by the residuary legatee, a will propounded by the executor, the Court condemned the executor plaintiff in costs: the plaintiff was also executor under an earlier will, which appointed the same residuary legatee, under which the executor took nothing, and the Court refused to make an order securing out of the estate to the defendant such costs as he might not be able to recover from the plaintiff (*t*).

Intervener.

It being doubtful whether the unsuccessful plaintiff in a suit for revocation of probate would be able to pay the costs of an intervener who had propounded the will, the Court ordered that the intervener's costs should be paid out of the estate: a next of kin, who unsuccessfully opposed a will, was condemned in the costs of another next of kin, whom he had cited to see proceedings, and who had appeared and pleaded, but had taken no other part (*u*).

General prin-
ciples.

The principle on which costs are given out of the estate is, that the party was led into the suit by the state of the testamentary papers (*x*).

Thus, when litigation is rendered necessary by the state in which the deceased left his papers, the costs of it, though unsuccessful, will be allowed out of the estate (*y*).

The unsuccessful opponent of a will will not be condemned in costs if there was reasonable ground for his disputing the will, but he will not be entitled to his costs out of the estate unless the litigation was justified by the act of the testator, or by the misconduct of the person out of whose pocket such costs would come if paid out of the estate (*z*).

Heir-at-law.

Where the Court gives the next of kin who unsuccessfully opposes a suit their costs out of the estate, on the ground

(*t*) *Nash v. Yellooly*, 3 Sw. & Tr. 59.

(*u*) *Cross v. Cross & others*, 3 Sw. & Tr. 292.

(*x*) *Hillam v. Walker*, 1 Hag. Ecc. R. 74.

(*y*) *Thorncraft v. Lashmar*, 31 L. J., P. & M. 150; 2 Sw. & Tr. 484.

(*z*) *Williams v. Henry*, 33 L. J., P. & M. 110; 3 Sw. & Tr. 471.

that the litigation was caused by the act of the testator, it will also give the heir-at-law who has been cited to see proceedings his costs out of the estate, if he has not, by his conduct, put the estate to unnecessary expense (a). Costs out of estate.

The costs incurred by a creditor in obtaining the appointment of an administrator pendente lite were allowed out of the estate (b).

A next of kin, after making inquiries for a will and waiting for five months to see whether a will was forthcoming, took out administration: the person of whom he made inquiries then produced a will, and propounded it as a legatee, and the administrator put him upon proof in solemn form: the Court revoked the administration and pronounced for the will, but allowed the next of kin's costs of obtaining administration and of the suit out of the estate, no explanation being given of the delay in producing the will (c).

A party successfully propounding a will, and discharging the duty of the executor, is entitled to his costs out of the estate (d). Successful party.

And this, even when he propounds merely a codicil, which the executor has refused to propound (e).

Where it was doubtful whether the unsuccessful plaintiff in a suit for revocation of probate would be able to pay the costs of an intervener who had propounded the will, the Court ordered that the intervener's costs should be paid out of the estate (f).

The will of a married woman being propounded by her executors, it was opposed by her husband, and a question of domicile was raised upon the pleadings. That question was decided in favour of the executors, and the decision Doubtful question of law.

(a) *Smyth v. Wilson*, 36 L. J., P. & M. 82.

(b) *Tichborne v. Tichborne*, 1 L. R., Pro. 730.

(c) *Smith v. Smith*, 34 L. J., P. & M. 57.

(d) *Sutton v. Druce*, 2 Phill. 323.

(e) *Thorne v. Rooke*, 2 Curt. 799; *Williams v. Goude*, 1 Hag. Ecc. R. 577.

(f) *Cross v. Cross*, 33 L. J., P. & M. 49.

Costs.

was affirmed upon appeal by the House of Lords, without costs. The costs of the litigation in this Court were allowed out of the estate, on the ground that the question raised by the party opposing was so doubtful that he was entitled to have it decided by a competent tribunal (*g*).

Reasonable ground for contest.

The next of kin pleaded in opposition to a will, first, undue execution; secondly, incapacity; thirdly, undue influence; fourthly, not the will of the deceased; and at the trial called witnesses in support of the pleas, but failed upon all the issues, and the will was pronounced for: the Court being of opinion that the improper conduct of the residuary legatee had given the next of kin reasonable ground for contesting the will, ordered that their costs should be paid out of the estate (*h*).

Object of suit.

A person entitled in distribution, who merely puts the executors to strict proof of a will in solemn form, if he has reasonable ground for doing so, will generally be allowed his costs out of the estate. But if it appears that his object in calling for such proof was not simply to obtain the judgment of the Court of Probate as to the validity of the will, but to elicit evidence which might be used by him in a suit instituted in another court, he will not be allowed his costs out of the estate (*i*).

Must be asked for at time of decree.

Where a will is pronounced for, and the party opposing appeals, but afterwards the appeal is abandoned, and the cause is remitted, the Court to which it is remitted cannot, at the prayer of the representative of the appellant (who had died), decree his costs out of the estate not prayed before the appeal was asserted (*k*).

So, where an appeal was asserted immediately after sentence, and subsequently waived, the Court could not

(*g*) *Robins & Paxton v. Dolphin*, 29 L. J., P. & M. 138; 1 Sw. & Tr. 517.

(*i*) *Swinfen v. Swinfen*, 29 L. J., P. & M. 153; 1 Sw. & Tr. 283.

(*h*) *Mitchell v. Gard*, 33 L. J., P. & M. 7; 3 Sw. & Tr. 275.

(*k*) *Horton v. Wilmot & others*, 1 No. of Ca. 311.

vary its decree, by giving the costs of the party who had Costs.
appealed without asking for costs before sentence (*l*).

So an application for a certificate of the costs of a special Application
jury ought to be made immediately after the verdict has immediate.
been given: an application made on a subsequent day is
too late (*m*).

Where issues of undue execution, incapacity and undue No costs.
influence, raised by the next of kin in opposition to a will
were found against him, the Court, however, refused to
condemn him in costs, because it was of opinion that the
parties propounding the will, and in whose favour it was
made, had acted so as to excite the suspicion of the next
of kin, but refused to allow his costs out of the estate, be-
cause he had not sufficient grounds for the pleas he had
filed (*n*).

Where the will in question was made under remarkable
circumstances, and such as would have justified the next
of kin in calling upon the executors to prove it in solemn
form, the next of kin having put the executors to a very
expensive trial, although she had previously received from
them full and complete information respecting its exe-
cution, was held not entitled to have her costs out of
the estate: the Court declined to make any order as to
costs (*o*).

A next of kin who unsuccessfully opposed a will on the
ground of incapacity, was not condemned in costs, where
the opposition was induced by a statement of the medical
attendant of the deceased, who also attested the will, that
he read over the will to the deceased, who signified his
assent by gesture only, and that he could not swear that
the deceased was in full possession of his mental facul-
ties (*p*).

- (*l*) *Major v. Knight*, 3 No. of L. J., P. & M. 134.
Ca. 677. (*o*) *Nicholls & another v.*
(*m*) *Skipper v. Bodkin*, 2 Sw. Binns, 1 Sw. & Tr. 239.
& Tr. 1. (*p*) *Tippett v. Tippett*, 35 L. J.,
(*n*) *Broadbent v. Hughes*, 29 P. & M. 41.

Costs.

Omission in
affidavit of
scripts.

The omission to annex to, or to mention in the affidavit of scripts, the instructions for a will, is no ground for allowing out of the estate the costs of an unsuccessful opposition to the will, if such opposition is not founded on the absence of instructions (*q*).

The plaintiffs propounded a will made in W., a foreign country: the defendant, the next of kin, pleaded that the testator, when he made his will, was a domiciled Scotchman, and that the will was not executed in conformity with the laws of Scotland: the plaintiffs replied, first, that the testator was not domiciled in Scotland but in W., and that the will was executed in conformity with the laws of W.; secondly, that the will was executed so as to be valid according to the law of Scotland, if the testator was a domiciled Scotchman; issue was joined, but before the cause came on for trial, a Scotch Court of Appeal, for the first time, decided that the will of a domiciled Scotchman affecting personalty, made in a foreign country and in accordance with its laws, is valid in Scotland: the defendant, as soon as he became cognizant of this decision, gave notice that he should not further contest the will, and at the hearing offered no opposition:—Held that though the defendant, if he had raised simply the question of law, might have been entitled to costs out of the estate, yet that, as he had raised also the question of domicil, and without reason, he was not entitled to such costs (*r*).

Concealment
desired by
testator.

Nine years after a testator's death his executors produced and propounded a will: it was opposed by the next of kin: the executors accounted for the delay by saying that the testator had desired that it should not be produced until after his mother's death: the will being admitted to probate, the Court held that as the conduct of the testator in desiring its concealment had given the

(*q*) *Forwell v. Poole*, 32 L. J.,
P. & M. 8.

(*r*) *Onslow & another v. Canon*, 30 L. J., P. & M. 165.

next of kin a reasonable ground for suspicion, she ought not to be condemned in the costs of her opposition (*s*). Costs.
Not allowed.

A., B. and C., three legatees named in a codicil, sought probate of it in solemn form against the executors named in the will; subsequently to their having propounded the codicil, D., another legatee, intervened: the executors by their replication, which was given in after D. had intervened, admitted part of the alleged codicil, including the legacy to D.:—Held that D. was not entitled to have his costs out of the estate (*t*).

Where the widow of a deceased propounded a will by which she was appointed sole executrix and universal legatee: one of the next of kin opposed, on the ground (*inter alia*) of incapacity, and upon that issue the Court pronounced against the will, but, under the special circumstances of the case, declined to condemn the widow in costs; and it was held the next of kin, although not entitled to administration, was entitled to his costs out of the estate (*u*).

In opposition to a will propounded by the executor, the next of kin pleaded that the will was not duly executed: at the trial one of the attesting witnesses was called by the executor, and proved due execution, but his evidence was contradicted by the other attesting witness who was called by the next of kin: a jury having found that the will was duly executed, the Court decreed probate, but refused to make any order as to costs (*x*). Attesting witnesses.

Where probate of a will was opposed by the next of kin, who was also the executor of a previous will, he made no inquiry into the circumstances under which the later will was executed, though he was aware of its execution, and knew the name of the attorney who had prepared it: he pleaded undue execution, incapacity, and that the

(*s*) *Emberley v. Trevanion*, 29 L. J., P. & M. 143.

(*u*) *Critchell v. Critchell*, 32 L. J., P. & M. 108.

(*t*) *Shawe & another v. Marshall & others*, 1 Sw. & Tr. 129.

(*x*) *Ferry v. King*, 31 L. J., P. & M. 120; 3 Sw. & Tr. 51.

Costs.

will was not the last will of the deceased, but gave notice before the hearing that he did not intend to produce evidence: on cross-examination of a witness called in support of the will, certain facts were elicited which in the opinion of the Court would have justified the next of kin in calling for proof of the will in solemn form, if they had been known to him: but as they were not known to him until stated by the witness in Court, and he had made no previous inquiry as to the circumstances attending the execution, the Court refused to allow his costs out of the estate, although it did not condemn him in costs (*y*).

Where the Judge of assize was satisfied with a verdict for the plaintiffs, establishing a will, but would not have been dissatisfied with a contrary verdict, the Court refused to condemn the defendant in costs (*z*).

Where next of kin unsuccessfully oppose a will on the ground of undue execution and incapacity, if there is reasonable ground for their opposition they will not be condemned in costs, even though they call witnesses in support of their plea (*a*).

The question of undue influence is often a mixed question of the degree of pressure exercised, and the capacity of the testator to resist it. The Court refused to condemn a next of kin in costs who had unsuccessfully opposed a will on the ground of incapacity and undue influence, although there was no direct evidence of undue influence, when it appeared that the will was made in favour of the testator's widow and at her instigation by answer of aye and no, and at a time when his capacity might be fairly questioned (*b*).

Where the only question in dispute between the parties in this suit was, whether the defendant had been lawfully married to the deceased: during the progress of it appli-

(*y*) *Seaton v. Sturch & another*,
29 L. J., P. & M. 195.

(*z*) *Bramley & another v. Bramley*, 3 Sw. & Tr. 430.

(*a*) *Summerell v. Clements*, 32
L. J., P. & M. 33; 3 Sw. & Tr. 35.

(*b*) *Smith v. Smith*, 36 L. J., P.
& M. 13.

cations were made personally to the defendant, and in writing to her attorney, to state where such marriage had taken place: no answer was returned by the attorney, and the information given by the defendant on this point was false: the marriage at the hearing was established, but the Court refused to condemn the plaintiff in the costs of the suit (c). Costs.
False information.

Where the plaintiff propounded the will of the deceased in a declaration in the ordinary form, and the defendant pleaded thereto: subsequently the plaintiff brought in a special declaration, in lieu of the first, and in such special declaration he alleged that the will had been executed under the circumstances and with the formalities required by the law of the State of New York, America: that the deceased at the time was domiciled in that State, and that after his death the will received probate in the competent Court of the State: the defendant pleaded to this declaration, and evidence was taken on both sides under a requisition directed to the authorities of the State of New York: afterwards the plaintiff applied to amend his special declaration, by adding a clause that the deceased was a British subject, and had his domicile of origin in Ireland: the amendment having been made the defendant withdrew from the suit:—Held that as the plaintiff in amending his special declaration had relinquished the legal position intended to be maintained by it, the defendant was not liable for any costs incurred subsequently to the filing of such declaration (d). No costs as to part.
Amendment of declaration.

In all cases the party opposing a will, may, with his plea, give notice to the party setting up the will, that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same Rule 41.

(c) *Wiseman v. Wiseman*, 36 L. J., P. & M. 22; 1 L. R., Prob. 351. (d) *Archer v. Burke*, 37 L. J., P. & M. 30.

Costs. liabilities in respect of costs as he would have been under
 Rule 41. similar circumstances, according to the practice of the
 Prerogative Court (*e*).

Condemned in. Next of kin has generally a right to call on the executor
 to prove a will *per testes*, and to cross-examine the witnesses
 produced in support of it, without being subject to costs.
 If, however, he gives in a plea and fails to prove it, he will
 be liable to costs from the date of the plea (*f*).

Plaintiff having propounded the will of a deceased, the
 defendant pleaded that the will was not duly executed,
 and that the deceased was incapable at the time of making
 a will: with this plea, under Rule 41, he gave notice
 that he only intended to cross-examine the witnesses pro-
 duced in support of the will: subsequently he obtained
 leave to and did file a plea of undue influence on the part
 of the plaintiff, but did not withdraw the above-mentioned
 notice:—Held that such notice only protected the defen-
 dant from costs in case he limited his cross-examination to
 those matters required to be established by an executor in
 proving a will in solemn form, namely, that the will was
 duly executed, and that the testator was capable at the
 time of execution (*g*).

In a testamentary suit, the defendants with their pleas
 gave notice that they merely insisted upon the will being
 proved in solemn form of law by the production of the
 attesting witnesses, and that if both such witnesses were
 produced, they only intended to cross-examine the wit-
 nesses produced in support of the will. The plaintiff
 examined both the attesting witnesses:—Held that under
 the rules a sufficient notice had been given, and that the
 defendants, one of whom was an executor under an earlier
 will of the deceased than the one propounded, were not
 liable to be condemned in costs (*h*).

(*e*) Rule 41, C. B.

P. & M. 79.

(*f*) *Farler v. Farler*, 27 L. J.,
 P. & M. 103.

(*h*) *Leman v. George & Rosser*,
 37 L. J., P. & M. 13.

(*g*) *Ireland v. Rendall*, 35 L. J.,

Where, in a testamentary suit, the plaintiff, opposing a codicil, pleaded that it was not executed in accordance with the Wills Act. About three weeks after this plea had been filed a notice was given to the other party that if both the attesting witnesses to the codicil were produced at the hearing, the plaintiff would call no witnesses on that issue:—Held that whether or no the form of the notice was a compliance with the terms of the 41st Rule, as it was not delivered with the plea to the defendant, the plaintiff could not claim under it any exemption as to costs (*i*). Costs.
Rule 41.

A party who pleads that the deceased did not know and approve of the contents of his will, may, therefore, upon that question cross-examine the witnesses produced by the plaintiff without being liable to costs, if he have given the notice required by Rule 41 (*k*).

Where a next of kin unsuccessfully applied for revocation of the probate of a will, he was condemned in costs, although there was strong evidence of the incapacity of the testator, on the ground that he had allowed an unreasonable time to elapse between the death of the testator and the institution of the suit, and had charged the widow of the testator and the drawer of the will with conspiring to obtain the will when the testator was incompetent (*l*). Delay and
false charge.

In deciding whether the costs of the unsuccessful party should be paid out of the estate or not, the Court will be guided by the opinion of the Judge before whom the issues were tried: when the opposition is groundless, the unsuccessful opponent of a will who has pleaded the incapacity of the testator will be condemned in costs, although he may have acted *bonâ fide* (*m*). •

A next of kin who unsuccessfully opposed a will was Who con-
demned in.

(*i*) *Bone v. Whittle*, 36 L. J., P. & M. 15.

(*l*) *Clayton v. Davies*, 33 L. J., P. & M. 28; 3 Sw. & Tr. 290.

(*k*) *Cleare v. Cleare*, 38 L. J., P. & M. 81.

(*m*) *West v. Goodrich*, 31 L. J., P. & M. 39.

Costs. condemned in the costs of another next of kin whom he
 Condemned in. had cited to see proceedings, and who had appeared
 and pleaded, but had taken no further part in the proceedings (*n*).

A next of kin though not cited to see proceedings, and not having intervened, if in fact cognizant of a suit between the executor of a will and other next of kin ending in the establishment of the will, is not at liberty in any way to oppose probate of such will being taken; and where on a verdict the Court has pronounced for a will, and a next of kin so situated had entered a caveat, the Court directed probate to issue in spite of the caveat, and condemned the next of kin in costs (*o*).

Security for. The extinct court had the power of requiring security for costs where a party was out of the kingdom, the Prerogative Court directed him to give security for costs (*p*); whence it follows the present Court has the same power. C. P. A. sect. 4. There seems to have been a general rule (*q*), of the extinct courts, that in all cases the Court may, upon application made to it, direct security for costs to be given by either or all of the parties.

Where an appellant became insolvent, an application for security for costs was refused on the ground that his assignee had appeared in the Court, who then became liable for costs (*r*).

A party in a cause becoming bankrupt was required to give security for costs (*s*).

But the power of the Court to make this order seems to have been doubted by the Court of Appeal (*t*).

(*n*) *Cross v. Cross*, 33 L. J., P.
 & M. 49; 3 Sw. & Tr. 292.

(*o*) *Ratcliffe & another v.*
Barnes, 2 Sw. & Tr. 486.

(*p*) *Hillam v. Walker*, 1 Hag.
 Ecc. R. 72.

(*q*) See Rule 13, 1830, set out
 p. xvi at the commencement of 2

Hag. Ecc. R.

(*r*) *Jones v. Goodrick*, 1 No. of
 Ca. 624.

(*s*) *Goldie v. Murray*, 1 No. of
 Ca. 35.

(*t*) *Jones v. Goodrick*, 1 No. of
 Ca. 625.

When a party is out of the kingdom the Court will direct him to give security for costs (u). Costs.
Security for.

As a general rule a defendant residing abroad will not be required to give security for costs. *Semble*, however, that when the defendant on the record is substantially plaintiff he may, if resident abroad, be required to give security for costs. After letters of administration of the effects of A., on the presumption of his death, had been decreed, but before the grant had been sealed, a person of the same name as A., and resident abroad, entered a caveat, and in the subsequent contentious proceedings, in which he was made defendant, opposed the application for administration on the ground that he was the alleged deceased: the Court refused to order him to give security for costs (v). Defendant re-
siding abroad.

But where probate was granted in 1835, and a motion was made for a decree calling on the executor to prove it in solemn form in 1853, the motion was granted on security being given for the costs (x). After delay.

The Court will not order the plaintiff to find security for costs, when, though a foreigner, he is staying in England at the time of the application, and there is nothing to lead to the supposition that he is on the point of leaving the country; his affidavit in opposition to such an application, need not state an intention of permanent residence (y).

An order was made for the revocation of a grant of administration with the will annexed. The letters of administration were in the hands of the proctors who had obtained them, and who claimed a lien upon them for costs. The Court declined to order the proctors to Attorney's
lien.

(u) *Hillam v. Walker*, 1 Hag. Ecc. R. 72.

(v) *Robson v. Robson*, 34 L. J., P. & M. 6; 3 Sw. & Tr. 568.

(x) *Topping, In goods of*, 2 Robert. 620.

(y) *Crispin v. Doglione*, 1 Sw. & Tr. 522.

Costs.

deliver up the letters for the purpose of cancellation, but directed that a copy of its order, revoking the grant and requiring the executor to bring the letters into the Registry if they ever came into his possession, should be served upon them (z).

(z) *Barnes v. Durham*, 38 L. J., P. & M. 46.

APPENDIX I.

STATUTES RELATING TO WILLS.

29 CAR. II. C. 3.

An Act for Prevention of Frauds and Perjuries.

V. And be it further enacted by the authority aforesaid, that from and after the said four and twentieth day of June all devises and bequests of any lands or tenements devisable either by force of the Statute of Wills or by this statute, or by force of the custom of Kent, or the custom of any borough, or any other particular custom, shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor by three or four credible witnesses, or else they shall be utterly void and of none effect.

VI. And moreover, no devise in writing of lands, tenements, or hereditaments, nor any clause thereof, shall at any time after the said four and twentieth day of June, be revocable otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing or obliterating the same by the testator himself, or in his presence and by his directions and consent, but all devises and bequests of lands and tenements shall remain and continue in force until the same be burnt, cancelled, torn or obliterated by the testator, or his directions, in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three or four witnesses, declaring the same, any former law or usage to the contrary notwithstanding.

XII. And for the amendment of the law in the particulars following, be it further enacted by the authority aforesaid, that from henceforth any estate pur autre vie shall be devisable by a will in writing signed by the party so devising the same, or by some other person in his presence and by his express directions,

29 Car. 2, c. 3.

[This act is repealed, except as to wills made before 1838, by 1 Vict. c. 26, *infra*.]

Devises of lands shall be in writing, and attested by three or four witnesses.

How the same shall be revocable.

Estates pur autre vie devisable.

29 Car. 2, c. 3. attested and subscribed in the presence of the devisor by three
 And assets. or more witnesses, and if no such devise thereof be made the
 same shall be chargeable in the hands of the heir, if it shall
 come to him by reason of a special occupancy, as assets by
 descent, as in case of lands in fee simple: and in case there be
 no special occupant thereof, it shall go to the executors or ad-
 ministrators of the party that had the estate thereof by virtue
 of the grant, and shall be assets in their hands.

Where no special
 occupant shall go
 to executors.

Nuncupative
 wills.

XIX. And for prevention of fraudulent practices in setting
 up nuncupative wills, which have been the occasion of much
 perjury, be it enacted by the authority aforesaid, that from and
 after the aforesaid four and twentieth day of June no nuncupa-
 tive will shall be good, where the estate thereby bequeathed
 shall exceed the value of thirty pounds, that is not proved by
 the oaths of three witnesses (at the least) that were present at
 the making thereof, nor unless it be proved that the testator, at
 the time of pronouncing the same, did bid the persons present,
 or some of them, bear witness that such was his will, or to that
 effect, nor unless such nuncupative will were made in the time
 of the last sickness of the deceased, and in the house of his or
 her habitation or dwelling, or where he or she hath been resi-
 dent for the space of ten days or more next before the making
 of such will, except where such person was surprised or taken
 sick, being from his own home, and died before he returned to
 the place of his or her dwelling.

Testimony of nun-
 cupative wills.

XX. And be it further enacted, that after six months passed
 after the speaking of the pretended testamentary words no
 testimony shall be received to prove any will nuncupative,
 except the said testimony, or the substance thereof, were com-
 mitted to writing within six days after the making of the said
 will.

Probates of nun-
 cupative wills.

XXI. And be it further enacted, that no letters testamentary
 or probate of any nuncupative will shall pass the seal of any
 court till fourteen days at the least after the decease of the
 testator be fully expired, nor shall any nuncupative will be at
 any time received to be proved unless process have first issued
 to call in the widow or next of kindred to the deceased, to the
 end they may contest the same if they please.

Repeal of wills.

XXII. And be it further enacted, that no will in writing
 concerning any goods or chattels or personal estate shall be re-
 pealed, nor shall any clause, devise or bequest therein be altered
 or changed by any words, or will by word of mouth only, except
 the same be in the life of the testator committed to writing, and
 after the writing thereof read unto the testator, and allowed by
 him, and proved to be so done by three witnesses at the least.

Soldiers' and
 mariners' wills
 excepted.

XXIII. Provided always, that notwithstanding this act any
 soldier being in actual military service, or any mariner or sea-
 man being at sea, may dispose of his moveables, wages, and

personal estate as he or they might have done before the making of this act. 29 Car. 2, c. 3.

XXIV. And it is hereby declared, that nothing in this act shall extend to alter or change the jurisdiction or right of probate of wills concerning personal estates, but that the Prerogative Court of the Archbishop of Canterbury, and other ecclesiastical courts, and other courts having right to the probate of such wills, shall retain the same right and power as they had before in every respect, subject nevertheless to the rules and directions of this act. The jurisdiction of courts saved.

XXV. And for the explaining one act of this present parliament, intituled "An Act for the better settling Intestates' Estates," be it declared by the authority aforesaid, that neither the said act nor anything therein contained shall be construed to extend to the estates of feme coverts that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same, as they might have done before the making of the said act. Husbands not compellable to make distribution of the personal estates of their wives.
22 & 23 Car. 2, c. 10.

25 GEO. II. C. 6.

An Act for avoiding and putting an End to certain Doubts and Questions, relating to the Attestation of Wills and Codicils, concerning Real Estates, in that Part of Great Britain called England, and in His Majesty's Colonies and Plantations in America. 25 Geo. 2, c. 6.

[Repealed, except as to the colonies, and as to wills made before 1838 by 1 Vict. c. 26, infra.]

WHEREAS by an act made in the twenty-ninth year of the reign of his late Majesty King Charles the Second, intituled, "An Act for Prevention of Frauds and Perjuries;" it is, amongst other things, enacted, that from and after the twenty-fourth day of June, in the year of our Lord one thousand six hundred and seventy-seven, all devises and bequests of any lands or tenements devisable, either by force of the Statute of Wills, or by that statute, or by force of the custom of Kent, or the custom of any borough, or any other particular custom, shall be in writing, and signed by the party so devising the same, or by some other person in his presence, and by his express direction; and shall be attested and subscribed in the presence of the said devisor, by three or four credible witnesses, or else they shall be utterly void and of none effect, which hath been found to be a wise and good provision: but whereas doubts have arisen who are to be deemed legal witnesses, within the intent of the said act; therefore, for avoiding the same, be it enacted by the King's most excellent Majesty, by and with the Preamble, reciting clause in an act of 29 Car. 2.

25 Geo. 2, c. 6.

Devisee, &c.
attesting, the de-
vise void, but he
admitted to prove
the will.

advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that if any person shall attest the execution of any will or codicil, which shall be made after the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and fifty-two, to whom any beneficial devise, legacy, estate, invest, gift, or appointment of, or affecting any real or personal estate, other than and except charges on lands, tenements, or hereditaments, for payment of any debt or debts, shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment, shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly null and void; and such person shall be admitted as a witness to the execution of such will or codicil, within the intent of the said act; notwithstanding such devise, legacy, estate, interest, gift, or appointment, mentioned in such will or codicil.

Creditor attesting,
admitted a wit-
ness to the will.

And be it further enacted by the authority aforesaid, that in case, by any will or codicil already made, or hereafter to be made, any lands, tenements, or hereditaments, are, or shall be charged with any debt or debts; and any creditor, whose debt is to charged, hath attested, or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil, within the intent of the said act.

Legatee who has
been paid, or shall
refuse his legacy,
admitted a wit-
ness to the will.

And be it further enacted by the authority aforesaid, that if any person hath attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil which shall be made on or before the said twenty-fourth day of June, in the year of our Lord one thousand seven hundred and fifty-two, to whom any legacy or bequest is or shall be thereby given, whether charged upon lands, tenements, or hereditaments, or not; and such person before he shall give his testimony concerning the execution of any such will or codicil, shall have been paid, or have accepted or released, or shall have refused to accept such legacy or bequest, upon tender made thereof; such person shall be admitted as a witness to the execution of such will or codicil, within the intent of the said act, notwithstanding such legacy or bequest.

After tender and
refusal he is
barred from the
legacy; but after
acceptance he
may retain the
same, though the
will be adjudged
void.

Provided always, and be it further enacted, that in case of such tender and refusal, as aforesaid, such person shall in no wise be intitled to such legacy or bequest, but shall be for ever afterwards barred therefrom; and in case of such acceptance, as aforesaid, such person shall retain to his own life the legacy or bequest which shall have been so paid, satisfied, or accepted, notwithstanding such will or codicil shall afterwards be adjudged or determined to be void, for want of due execution, or for any other cause or defect whatsoever.

And be it further enacted, that in case any such legatee, as aforesaid, who hath attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil, which shall be made on or before the said twenty-fourth day of June, in the year of our Lord one thousand seven hundred and fifty-two, shall have died in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, as aforesaid, and before he shall have refused to receive such legacy or bequest, on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil, within the intent of the said act, notwithstanding such legacy or bequest.

Provided always, that the credit of every such witness, so attesting the execution of any will or codicil, in any of the cases in this act before mentioned, and all circumstances relating thereto, shall be subject to the consideration and determination of the court, and the jury, before whom any such witness shall be examined, or his testimony or attestation made use of; or of the Court of Equity, in which the testimony or attestation of any such witness shall be made use of; in like manner, to all intents and purposes, as the credit of witnesses in all other cases ought to be considered of, and determined.

And be it further enacted by the authority aforesaid, that no person, to whom any beneficial estate, interest, gift, or appointment, shall be given or made, which is hereby enacted to be null and void, as aforesaid, or who shall have refused to receive any such legacy or bequest, on tender made, as aforesaid, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he shall have been so examined, demand or take possession of, or receive, any profits or benefit of or from any such estate, interest, gift, or appointment, so given or made to him, in or by any such will or codicil; or demand, receive, or accept, from any person or persons whatsoever, any such legacy or bequest, or any satisfaction or compensation for the same, in any manner, or under any colour or pretence whatsoever.

Provided always, and be it enacted by the authority aforesaid, that this act, or any thing herein contained, shall not extend, or be construed to extend, to the case of any heir at law, or of any devisee in a prior will or codicil of the same testator, executed and attested according to the said recited act, or any person claiming under them respectively, who has been in quiet possession for the space of two years next preceding the sixth day of May, in the year of our Lord one thousand seven hundred and fifty-one, as to such lands, tenements, and hereditaments, whereof he has been in quiet possession as aforesaid; and also that this act, or any thing herein contained, shall not extend, or be construed to extend, to any

25 Geo. 2, c. 6.

Legatee attesting and dying in the lifetime of the testator, or before he has received or refused his legacy, admitted a witness to the will.

Credit of the witness to be considered and determined by the court.

No devisee where the devise is made void; nor legatee who has refused to accept of the legacy, being examined to the execution of the will, shall afterwards demand or take any benefit or compensation for the same.

Cases particularized where the validity of wills and competency of witnesses are not affected by this act.

25 Geo. 2, c. 6. will or codicil, the validity or due execution whereof hath been contested in any suit in law or equity commenced by the heir of such deviser, or the devisee in any such prior will or codicil, for recovering the lands, tenements, or hereditaments, mentioned to be devised in any will or codicil so contested, or any part thereof, or for obtaining any other judgment or decree relative thereto, on or before the said sixth day of May, in the year of our Lord one thousand seven hundred and fifty-one, and which has been already determined in favour of such heir at law, or devisee in such prior will or codicil, or any person claiming under them respectively, or which is still depending, and has been prosecuted with due diligence; but the validity of every such will or codicil, and the competency of the witnesses thereto, shall be adjudged and determined in the same manner, to all intents and purposes, as if this act had never been made; any thing hereinbefore contained to the contrary thereof in any wise notwithstanding.

Possessions which are not comprehended within the meaning of the preceding clause.

Provided always nevertheless, and it is hereby declared, that no possession of any heir at law, or devisee in such prior will or codicil as aforesaid, or of any person claiming under them respectively, which is consistent with, or may be warranted by or under, any will or codicil attested according to the true intent and meaning of this act, or where the estate descended or might have descended, to such heir at law, till a future or executory devise, by virtue of any will or codicil attested according to this act, should or might take effect, shall be deemed to be a possession within the intent and meaning of the clause herein last before contained.

And whereas in some of the British colonies or plantations in America, the said act of the twenty-ninth year of the reign of King Charles the Second, has been received for law, or acts of assembly have been made, whereby the attestation and subscription of witnesses to devises of lands, tenements, and hereditaments, have been required: Therefore, to prevent and avoid doubts which may arise in the said colonies or plantations, in relation to the attestation of such devises of lands, tenements, and hereditaments; be it enacted by the authority aforesaid, that this act, and every clause, matter, and thing therein contained, shall extend to such of the said colonies and plantations, where the said act of the twenty-ninth year of the reign of King Charles the Second, is by act of assembly made, or by usage received as law, or where by act of assembly or usage, the attestation and subscription of a witness or witnesses are made necessary to devises of lands, tenements, or hereditaments; and shall have the same force and effect in the construction of, or for the avoiding of doubts upon, the said acts of assembly, and laws of the said colonies and plantations, as the same ought to have in the construction of, or for the avoiding

This act to extend to such of the British colonies in America, where the act of 29 Car. 2, is received as a law, &c.

of doubts upon, the said act of the twenty ninth year of the 25 Geo. 2, c. 6.
reign of King Charles the Second in England.

Provided always, that as to cases arising in any of the said colonies or plantations in America, no such devise, legacy, or bequest as aforesaid, shall be made null and void, by virtue of this act, unless the will or codicil whereby such devise, legacy, or bequest shall be given, shall be made after the first day of March, which shall be in the year of our Lord one thousand seven hundred and fifty-three.

Devises, &c.
by wills made
1 March, 1753, to
be only void.

1 VICT. c. 26.

An Act for the Amendment of the Laws with respect to Wills. 1 Vict. c. 26.
[3rd July, 1837.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows; (that is to say,) the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an act passed in the twelfth year of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries, and Tenures in capite and by Knights Service and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof," or by virtue of an act passed in the parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries and Tenures in capite and by Knights Service," and to any other testamentary disposition; and the words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities

Meaning of certain words in this act:

"Will;"

12 Car. 2, c. 24.

14 & 15 Car. 2 (I.)

"Real estate;"

"Personal estate;"

1 Vict. c. 26.	for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.
Number;	
Gender.	
Repeal of the Statutes of Wills, 32 Hen. 8, c. 1, and 34 & 35 Hen. 8, c. 5.	II. And be it further enacted, that an act passed in the thirty-second year of the reign of King Henry the Eighth, intituled "The Act of Wills, Wards, and Primer Seisins, whereby a Man may devise Two Parts of his Land;" and also an act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled "The Bill concerning the Explanation of Wills;" and also an act passed in the parliament of Ireland in the tenth year of the reign of King Charles the First, intituled "An Act how Lands, Tenements, &c. may be disposed by Will or otherwise, and concerning Wards and Primer Seisins;" and also so much of an act passed in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for Prevention of Frauds and Perjuries," and of an act passed in the parliament of Ireland in the seventh year of the reign of King William the Third, intituled "An Act for Prevention of Frauds and Perjuries," as relates to devises or bequests of lands or tenements, or to the revocation or alteration of any devise in writing of any lands, tenements, or hereditaments, or any clause thereof, or to the devise of any estate pur autre vie, or to any such estate, being assets, or to nuncupative wills, or to the repeal, altering, or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise, or bequest therein; and also so much of an act passed in the fourth and fifth years of the reign of Queen Anne, intituled "An Act for the Amendment of the Law and the better Advancement of Justice," and of an act passed in the parliament of Ireland in the sixth year of the reign of Queen Anne, intituled "An Act for the Amendment of the Law and the better Advancement of Justice," as relates to witnesses to nuncupative wills; and also so much of an act passed in the fourteenth year of the reign of King George the Second, intituled "An Act to amend the Law concerning Common Recoveries, and to explain and amend an Act made in the Twenty-ninth Year of the Reign of King Charles the Second, intituled 'An Act for Prevention of Frauds and Perjuries,'" as relates to estates pur autre vie; and also an act passed in the twenty-fifth year of the reign of King George the Second, intituled "An Act for avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates in that Part of Great Britain called Eng-
10 Car. 1, sess. 2, c. 2 (L.)	
Sects. 5, 6, 12, 19, 20, 21 & 22 of the Statute of Frauds, 29 Car. 2, c. 3; 7 Will. 3, c. 12 (L.)	
Sect. 14 of 4 & 5 Anne, c. 16.	
6 Anne, c. 10 (L.)	
Sect. 9 of 14 Geo. 2, c. 20.	
25 Geo. 2, c. 6 (except as to colonies).	

land, and in his Majesty's Colonies and Plantations in America," except so far as relates to his Majesty's colonies and plantations in America; and also an act passed in the parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled "An Act for the avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates;" and also an act passed in the fifty-fifth year of the reign of King George the Third, intituled "An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will," shall be and the same are hereby repealed, except so far as the same acts or any of them respectively relate to any wills or estates pur autre vie to which this act does not extend.

1 Vict. c. 26.

25 Geo. 2, c. 11 (I.)

55 Geo. 3, c. 192.

III. And be it further enacted, that it shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir at law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this act, if this act had not been made; and also to estates pur autre vie, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests,

All property may be disposed of by will,

comprising customary freeholds and copyholds without surrender and before admittance, and also such of them as cannot now be devised;

estates pur autre vie;

contingent interests;

rights of entry; and property acquired after execution of the will.

1 Vict. c. 26. and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

As to the fees and fines payable by devisees of customary and copyhold estates.

IV. Provided always, and be it further enacted, that where any real estate of the nature of customary freehold or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering, or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator: provided also, that where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted thereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled or claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering, or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will; all which stamp duties, fees, fine, or sums of money due as aforesaid shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person so entitled or claiming to be entitled to the same real estate as aforesaid.

Wills or extracts of wills of customary freeholds and copyholds to be entered on the court rolls;

V. And be it further enacted, that when any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will;

and when any such real estate could not have been disposed of by will if this act had not been made, the same fine, heriot, dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall, as against the devisee of such estate, have the same remedy for recovering and enforcing such fine, heriot, dues, duties, and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

1 Vict. c. 26.

and the lord to be entitled to the same fine, &c. when such estates are not now divisible as he would have been from the heir in case of descent.

VI. And be it further enacted, that if no disposition by will shall be made of any estate pur autre vie of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assents by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate pur autre vie, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

Estates pur autre vie.

VII. And be it further enacted, that no will made by any person under the age of twenty-one years shall be valid.

No will of a person under age valid;

VIII. Provided also, and be it further enacted, that no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this act.

Nor of a feme covert, except such as might now be made.

IX. And be it further enacted, that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Every will shall be in writing, and signed by the testator in the presence of two witnesses at one time (a).

X. And be it further enacted, that no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise

Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed.

(a) Amended by 15 Vict. c. 24, *infra*.

B.

A A

1 Vict. c. 26.

Soldiers' and mariners' wills excepted.

Act not to affect certain provisions of 11 Geo. 4 & 1 Will. 4, c. 20, with respect to wills of petty officers and seamen and marines.

Publication not to be requisite.

Will not to be void on account of incompetency of attesting witness.

Gifts to an attesting witness to be void (b).

Creditor attesting to be admitted a witness (b).

of such power should be executed with some additional or other form of execution or solemnity.

XI. Provided always, and be it further enacted, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this act.

XII. And be it further enacted, that this act shall not prejudice or affect any of the provisions contained in an act passed in the eleventh year of the reign of his Majesty King George the Fourth and the first year of the reign of his late Majesty King William the Fourth, intituled "An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy," respecting the wills of petty officers and seamen in the royal navy, and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other monies payable in respect of services in her Majesty's navy.

XIII. And be it further enacted, that every will executed in manner hereinbefore required shall be valid without any other publication thereof.

XIV. And be it further enacted, that if any person who shall attest the execution of a will shall at the time of the execution thereof or any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

XV. And be it further enacted, that if any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

XVI. And be it further enacted, that in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

(b) As to wills made before 1838 in these respects, see 25 Geo. II. c. 6, *supra*.

XVII. And be it further enacted, that no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof. 1 Vict. c. 26.
Executor to be admitted a witness (c).

XVIII. And be it further enacted, that every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions). Will to be revoked by marriage.

XIX. And be it further enacted, that no will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances. No will to be revoked by presumption.

XX. And be it further enacted, that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same. No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

XXI. And be it further enacted, that no obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will. No alteration in a will shall have any effect unless executed as a will.

XXII. And be it further enacted, that no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown. No will revoked to be revived otherwise than by re-execution or a codicil to revive it.

(c) See note (b), *ante*, p. 354.

1 Vict. c. 26.

A devise not to be rendered inoperative by any subsequent conveyance or act.

A will shall be construed to speak from the death of the testator.

A residuary devise shall include estates comprised in lapsed and void devises.

A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands.

A general gift shall include estates over which the testator has a general power of appointment.

XXIII. And be it further enacted, that no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

XXIV. And be it further enacted, that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

XXV. And be it further enacted, that, unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

XXVI. And be it further enacted, that a devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

XXVII. And be it further enacted, that a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

XXVIII. And be it further enacted, that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

1 Vict. c. 26.

A devise without any words of limitation shall be construed to pass the fee.

XXIX. And be it further enacted, that in any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: provided, that this act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

The words "die without issue," or "die without leaving issue," shall be construed to mean die without issue living at the death.

XXX. And be it further enacted, that where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest.

XXXI. And be it further enacted, that where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.

XXXII. And be it further enacted, that where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the

Devises of estates tail shall not lapse.

1 Vict. c. 26. testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Gifts to children or other issue who leave issue living at the testator's death shall not lapse.

XXXIII. And be it further enacted, that where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Act not to extend to wills made before 1838, nor to estates pur autre vie of persons who die before 1838.

XXXIV. And be it further enacted, that this act shall not extend to any will made before the first day of January, one thousand eight hundred and thirty-eight, and that every will re-executed or republished, or revived by any codicil, shall for the purposes of this act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and that this act shall not extend to any estate pur autre vie of any person who shall die before the first day of January, one thousand eight hundred and thirty-eight.

Act not to extend to Scotland.

XXXV. And be it further enacted, that this act shall not extend to Scotland.

Act may be altered this session.

XXXVI. And be it enacted, that this act may be amended, altered, or repealed by any act or acts to be passed in this present session of parliament.

15 VICT. C. 24 (LOCKE KING'S ACT).

15 Vict. c. 24. *An Act for the Amendment of an Act passed in the First Year of the Reign of Her Majesty Queen Victoria, intituled "An Act for the Amendment of the Laws with respect to Wills."* [17th June, 1852.]

WHEREAS the laws with respect to the execution of wills require further amendment: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same (as follows):

1 Vict. c. 26.

I. Where by an act passed in the first year of the reign of her Majesty Queen Victoria, intituled "An Act for the Amendment of the Laws with respect to Wills," it is enacted, that no will shall be valid unless it shall be signed at the foot or end

thereof by the testator, or by some other person in his presence, and by his direction : every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this act, if the signature shall be so placed at or after, or following or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature ; and the enumeration of the above circumstances shall not restrict the generality of the above enactment ; but no signature under the said act or this act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

15 Vict. c. 24.

When signature
to a will shall be
deemed valid.

II. The provisions of this act shall extend and be applied to every will already made, where administration or probate has not already been granted or ordered by a court of competent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the ecclesiastical courts, has not been possessed or enjoyed by some person or persons claiming to be entitled thereto in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons than the persons claiming under the will, by a court of competent jurisdiction, in consequence of the defective execution of such will.

Act to extend to
certain wills
already made.

III. The word "will" shall in the construction of this act be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in the said act of the first year of the reign of her Majesty Queen Victoria.

Interpretation of
"will."

15 Vict. c. 24. IV. This act may be cited as “The Wills Act Amendment
Short title of act. Act, 1852.”

24 & 25 VICT. c. 114.

24 & 25 Vict. *An Act to amend the Law with respect to Wills of Personal*
c. 114. *Estate made by British Subjects.*

[6th August, 1861.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Wills made out of the kingdom to be admitted if made according to the law of the place where made.

1. Every will and other testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards personal estate be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where the same was made or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of her Majesty's dominions where he had his domicile of origin.

Wills made in the kingdom to be admitted if made according to local usage.

2. Every will and other testamentary instrument made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards personal estate be held to be well executed, and shall be admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made.

Change of domicile not to invalidate will.

3. No will or other testamentary instrument shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

Nothing in this act to invalidate wills otherwise made.

4. Nothing in this act contained shall invalidate any will or other testamentary instrument as regards personal estate which would have been valid if this act had not been passed, except as such will or other testamentary instrument may be revoked or altered by any subsequent will or testamentary instrument made valid by this act.

Extent of act.

5. This act shall extend only to wills and other testamentary instruments made by persons who die after the passing of this act.

24 & 25 VICT. C. 121.

An Act to amend the Law in relation to the Wills and Domicile of British Subjects dying whilst resident abroad, and of Foreign Subjects dying whilst resident within Her Majesty's Dominions. 24 & 25 Vict. c. 121.

[6th August, 1861.]

WHEREAS by reason of the present law of domicile the wills of British subjects dying whilst resident abroad are often defeated, and their personal property administered in a manner contrary to their expectations and belief; and it is desirable to amend such law, but the same cannot be effectually done without the consent and concurrence of foreign states: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, as follows:

1. Whenever her Majesty shall by convention with any foreign state agree that provisions to the effect of the enactments herein contained shall be applicable to the subjects of her Majesty and of such foreign state respectively, it shall be lawful for her Majesty by any order in council to direct, and it is hereby enacted, that from and after the publication of such order in the London Gazette no British subject resident at the time of his or her death in the foreign country named in such order shall be deemed under any circumstances to have acquired a domicile in such country unless such British subject shall have been resident in such country for one year immediately preceding his or her decease, and shall also have made and deposited in a public office of such foreign country (such office to be named in the order in council) a declaration in writing of his or her intention to become domiciled in such foreign country; and every British subject dying resident in such foreign country, but without having so resided and made such declaration as aforesaid, shall be deemed for all purposes of testate or intestate succession as to moveables to retain the domicile he or she possessed at the time of his or her going to reside in such foreign country as aforesaid.

2. After any such convention as aforesaid shall have been entered into by her Majesty with any foreign state it shall be lawful for her Majesty by order in council to direct, and from and after the publication of such order in the London Gazette it shall be and is hereby enacted, that no subject of any foreign country who at the time of his or her death shall be resident in any part of Great Britain or Ireland shall be deemed under any circumstances to have acquired a domicile therein, unless such foreign subject shall have been resident within Great Britain or Ireland for one year immediately preceding his or her

No British subject dying in a foreign country to be deemed to have acquired a domicile unless resident there for one year immediately preceding his or her death, &c., and for all purposes of testate or intestate succession shall retain the domicile possessed at the time of going to reside in such foreign country.

No foreign subject dying in Great Britain or Ireland to be deemed to have acquired a domicile unless resident therein for one year immediately preceding his or her death, &c.

24 & 25 Vict.
c. 121.

decease, and shall also have signed, and deposited with her Majesty's secretary of state for the home department, a declaration in writing of his or her desire to become and be domiciled in England, Scotland, or Ireland, and that the law of the place of such domicile shall regulate his or her moveable succession.

Who this act shall
not apply to.

3. This act shall not apply to any foreigners who may have obtained letters of naturalization in any part of her Majesty's dominions.

When subjects of
foreign states
shall die in her
Majesty's domi-
nions, and there
shall be no persons
to administer to
their estates, the
consuls of such
foreign states
may administer.

4. Whenever a convention shall be made between her Majesty and any foreign state, whereby her Majesty's consuls or vice-consuls in such foreign state shall receive the same or the like powers and authorities as are hereinafter expressed, it shall be lawful for her Majesty by order in council to direct, and from and after the publication of such order in the London Gazette it shall be and is hereby enacted, that whenever any subject of such foreign state shall die within the dominions of her Majesty, and there shall be no person present at the time of such death who shall be rightfully entitled to administer to the estate of such deceased person, it shall be lawful for the consul, vice-consul, or consular agent of such foreign state within that part of her Majesty's dominions where such foreign subject shall die, to take possession and have the custody of the personal property of the deceased, and to apply the same in payment of his or her debts and funeral expenses, and to retain the surplus for the benefit of the persons entitled thereto; but such consul, vice-consul, or consular agent shall immediately apply for and shall be entitled to obtain from the proper court letters of administration of the effects of such deceased person, limited in such manner and for such time as to such court shall seem fit.

28 & 29 VICT. C. 72.

28 & 29 Vict.
c. 72.

An Act to make better Provision respecting Wills of Seamen and Marines of the Royal Navy and Marines.

[29th June, 1865.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Short title.

1. This act may be cited as "The Navy and Marines (Wills) Act, 1865."

Interpretation of
terms.

2. In this act—

The term "the admiralty" means the lord high admiral of the United Kingdom, or the commissioners for executing the office of lord high admiral :

The term "seaman or marine" means a petty officer or seaman, non-commissioned officer of marines or marine, or other person forming part in any capacity of the complement of any of her majesty's vessels, or otherwise belonging to her Majesty's naval and marine force, exclusive of commissioned, warrant, and subordinate officers, and assistant engineers, and of Kroomen.

28 & 29 Vict.
c. 72.

3. A will made after the commencement of this act by any person at any time previously to his entering into service as a seaman or marine shall not be valid to pass any wages, prize money, bounty money, grant, or other allowance in the nature thereof, or other money payable by the admiralty, or any effects or money in charge of the admiralty.

Will made before
entry ineffectual
as to wages, &c.

4. A will made after the commencement of this act by any person while serving as a seaman or marine shall not be valid for any purpose if it is written or contained on or in the same paper, parchment, or instrument with a power of attorney.

Will invalid if
combined with
power of attorney.

5. A will made after the commencement of this act by any person while serving as a seaman or marine, or when he has ceased so to serve, shall not be valid to pass any wages, prize money, bounty money, grant, or other allowance in the nature thereof, or other money payable by the admiralty, or any effects or money in charge of the admiralty, unless it is made in conformity with the following provisions:—

Regulations for
wills o. seamen,
&c. as to wages,
&c.

- (1.) Every such will shall be in writing and be executed with the formalities required by the law of England in the case of persons not being soldiers in actual military service or mariners or seamen at sea.
- (2.) Where the will is made on board one of her Majesty's ships, one of the two requisite attesting witnesses shall be a commissioned officer, chaplain, or warrant or subordinate officer belonging to her Majesty's naval or marine or military force:
- (3.) Where the will is made elsewhere than on board one of her Majesty's ships, one of the two requisite attesting witnesses shall be such a commissioned officer or chaplain or warrant or subordinate officer as aforesaid, or the governor, agent, physician, surgeon, assistant surgeon, or chaplain of a naval hospital at home or abroad, or a justice of the peace, or the incumbent, curate, or minister of a church or place of worship in the parish where the will is executed, or a British consular officer, or an officer of customs, or a notary public:

A will made in conformity with the foregoing provisions shall, as regards such wages, money, or effects, be deemed to be well made for the purpose of being admitted to probate in England; and the person taking out representation to the

28 & 29 Vict.
c. 72.

As to wills made
by prisoners of
war.

testator under such will shall exclusively be deemed the testator's representative with respect to such wages, money, or effects.

6. Notwithstanding anything in this or any other act, a will made after the commencement of this act by a seaman or marine while he is a prisoner of war shall (as far as regards the form thereof) be valid for all purposes if it is made in conformity with the following provisions :—

- (1.) If it is in writing and is signed by him, and his signature thereto is made or acknowledged by him in the presence of and is in his presence attested by one witness, being either a commissioned officer or chaplain belonging to her Majesty's naval or marine or military force, or a warrant or subordinate officer of her Majesty's navy, or the agent of a naval hospital, or a notary public :
- (2.) If the will is made according to the forms required by the law of the place where it is made :
- (3.) If the will is in writing and executed with the formalities required by the law of England in the case of persons not being soldiers in actual military service or mariners or seamen at sea.

Payment under
will not in con-
formity with act.

7. Notwithstanding anything in this act, in case of a will made after the commencement of this act by any person while serving as a marine or seaman, and being either in actual military service or a mariner or seaman at sea, the admiralty may pay or deliver any wages, prize money, bounty money, grant or other allowance in the nature thereof, or other money payable by the admiralty or any effects or money in charge of the admiralty to any person claiming to be entitled thereto under such will, though not made in conformity with the provisions of this act, if, having regard to the special circumstances of the death of the testator, the admiralty are of opinion that compliance with the requirements of this act may be properly dispensed with.

Commencement
of act.

8. This act shall commence on such day, not later than the first day of January, one thousand eight hundred and sixty-six, as her Majesty in council thinks fit to direct ; nevertheless her Majesty in council may, if it seems fit, with reference to any places out of the United Kingdom, direct that this act do not commence there, respectively, until a time after that day, and with respect to every such place the time so appointed shall be deemed the time of commencement of this act.

Publication of
orders in council.

9. Every order in council under this act shall be published in the London Gazette, and shall be laid before both houses of parliament within thirty days after the making thereof, if parliament is then sitting, and if not, then within thirty days after the next meeting of parliament.

STATUTES RELATING TO EXECUTORS AND ADMINISTRATORS.

22 & 23 CAR. II. c. 10.

An Act for the better settling of Intestates Estates.

22 & 23 Car. 2,
c. 10.

BE it enacted by the King's most excellent Majesty, with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That all ordinaries, as well the Judges of the Prerogative Courts of Canterbury and York for the time being as all other ordinaries and ecclesiastical judges, and every of them, having power to commit administration of the goods of persons dying intestate, shall and may, upon their respective granting and committing of administrations of the goods of persons dying intestate after the first day of June, one thousand six hundred seventy and one, of the respective person or persons to whom any administration is to be committed take sufficient bonds, with two or more able sureties, respect being had to the value of the estate, in the name of the ordinary, with the condition in form and manner following, *mutatis mutandis*; viz:—

All ordinaries who
have power to
grant administra-
tions have power
to take bond.

II. "The condition of this obligation is such, that if the within bounden A. B., administrator of all and singular the goods, chattels and credits of C. D. deceased, do make or cause to be made a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased which have or shall come to the hands, possession or knowledge of him the said A. B., or into the hands and possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited into the registry of _____ Court at or before the _____ day of _____ next ensuing, and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased at the time of his death which at any time after shall come to the hands or possession of the said A. B., or into the hands and possession of any other person or persons for him, do well and truly administer according to law, and further do make or cause to be made a true and just account of his said administration at or before the _____ day of _____, and all the rest and residue of the said goods, chattels and credits which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the Judge or Judges for the time being of the said Court, shall deliver and

The condition of
bonds.

22 & 23 Car. 2, c. 10. pay unto such person or persons respectively as the said judge or judges by his or their decree or sentence, pursuant to the true intent and meaning of this act, shall limit and appoint, and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said Court, making request to have it allowed and approved accordingly, if the said A. B. within bounden, being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue."

Ordinaries have power to call administrators to account, and to make distribution, &c.

III. Which bonds are hereby declared and enacted to be good to all intents and purposes, and pleadable in any courts of justice ; and also that the said ordinaries and judges respectively shall and may and are enabled to proceed and call such administrators to account for and touching the goods of any person dying intestate, and upon hearing and due consideration thereof to order and make just and equal distribution of what remaineth clear (after all debts, funerals, and just expenses of every sort first allowed and deducted) amongst the wife and children, or children's children, if any such be, or otherwise to the next of kindred to the dead person in equal degree, or legally representing their stocks *pro suo cuique jure*, according to the laws in such cases, and the rules and limitation hereafter set down, and the same distributions to decree and settle, and to compel such administrators to observe and pay the same by the due course of his Majesty's ecclesiastical laws ; saving to every one, supposing him or themselves aggrieved, their right of appeal as was always in such cases used.

Customs of London and York saved.

IV. Provided, that this act, or anything herein contained, shall not any ways prejudice or hinder the customs observed within the city of London, or within the province of York, or other places having known and received customs peculiar to them, but that the same customs may be observed as formerly, anything herein contained to the contrary notwithstanding.

How and to whom the surplusage is to be distributed.

Provided always, and be it enacted by the authority aforesaid, that all ordinaries and every other person who by this act is enabled to make distribution of the surplusage of the estate of any person dying intestate, shall distribute the whole surplusage of such estate or estates in manner and form following; that is to say, one third part of the said surplusage to the wife of the intestate, and all the residue by equal portions to and amongst the children of such persons dying intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children (not being heir at law) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in

his lifetime, by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made ; and in case any child other than the heir at law shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his lifetime by portion not equal to the share which will be due to the other children by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the lifetime of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated ; but the heir at law, notwithstanding any land that he shall have by descent or otherwise from the intestate, is to have an equal part in the distribution with the rest of the children, without any consideration of the value of the land which he hath by descent or otherwise from the intestate.

22 & 23 Car. 2,
c. 10.

Advancement by
portion.

Heir at law to
have an equal
part.

VI. And in case there be no children, nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, the residue of the said estate to be distributed equally to every of the next of kindred of the intestate who are in equal degree, and those who legally represent them.

If no children, es-
tate to be allotted
to wife and next
of kin.

VII. Provided, that there be no representations admitted among collaterals after brothers' and sisters' children : and in case there be no wife, then all the said estate to be distributed equally to and amongst the children ; and in case there be no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever.

If no wife,
amongst the
children.

VIII. Provided also, and be it likewise enacted by the authority aforesaid, to the end that a due regard be had to creditors, that no such distribution of the goods of any person dying intestate be made till after one year be fully expired after the intestate's death ; and that such and every one to whom any distribution and share shall be allotted shall give bond, with sufficient sureties in the said Courts, that if any debt or debts truly owing by the intestate shall be afterwards sued for and recovered, or otherwise duly made to appear, that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of that debt or debts, and of the costs of suit and charges of the administrator by reason of such debt, out of the part and share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as aforesaid.

No distribution
till after one year.

If debts after-
wards appear,
then all to refund
proportionably.

IX. Provided always, and be it enacted by the authority aforesaid, that in all cases where the ordinary hath used here-

Act not to extend
to administration
cum testamento
annexo.

22 & 23 Car. 2, c. 10. tofore to grant administration cum testamento annexo he shall continue so to do, and the will of the deceased in such testament expressed shall be performed and observed in such manner as it should have been if this act had never been made.

Continuance of act.

X. Provided also, that this act shall continue in force for seven years, and from thence to the end of the next session of parliament, and no longer.

1 JAC. II. c. 17.

Children dying after father intestate without wife or children.

Sect. 7. Provided also, and it is hereby enacted, that if after the death of a father any of his children shall die intestate without wife or children, in the lifetime of the mother, every brother and sister, and the representatives of them, shall have an equal share with her; anything in the last-mentioned acts notwithstanding.

38 GEO. III. c. 87.

38 Geo. 3, c. 87. *An Act for the Administration of Assets in Cases where the Executor to whom Probate has been granted is out of the Realm.* [28th June, 1798.]

Preamble.

WHEREAS the laws now existing are not sufficient to enforce a speedy distribution of the assets of deceased persons where the executor to whom probate of the will has been granted is out of the jurisdiction of his Majesty's courts of law and equity; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, at the expiration of twelve calendar months from the death of any testator, if the executors or executor to whom probate of the will shall have been granted, are or is then residing out of the jurisdiction of his Majesty's courts of law and equity, it shall be lawful for the Ecclesiastical Court which has granted probate of such will, upon the application of any creditor, next of kin, or legatee, grounded on the affidavit hereinafter mentioned, to grant such special administration as hereinafter is also mentioned; which administration shall be written or printed upon paper or parchment stamped only with one five shilling stamp, and shall pay no further or other duty to his Majesty, his heirs or successors.

If, after a certain period the executor to whom probate is granted shall not reside within the jurisdiction of his Majesty's courts, on application of a creditor, &c. special administration may be granted, for which a 5s. stamp duty shall be paid.

The party applying to make the following affidavit.

II. And be it further enacted, that the party applying to the Spiritual Court to grant such administration as aforesaid shall

38 Geo. 3, c. 87. said goods, chattels and credits, according to the tenor and effect of the said will, limited as aforesaid, so far as such goods, chattels, and credits of the deceased will thereto extend, and the law requires, you having been already sworn, well and faithfully, to administer the same, and to make a true and perfect inventory of all and singular the said goods, chattels, and credits, so far as the same may come to your hands, and to exhibit the same into the Registry of our said Prerogative Court of Canterbury, on or before the next ensuing, and also to render a just and true account thereof: and we do by these presents ordain and constitute you administrator of all and singular the goods, chattels, and credits of the said deceased, limited as aforesaid, but no further or otherwise.

“ Given at London, the day of in the year of our Lord and in the year of our translation.”

Court may appoint persons to collect outstanding debts.

IV. And be it further enacted, that it shall be lawful for the Court of Equity in which such suit shall be depending, to appoint (if it shall be needful) any persons or person to collect in any outstanding debts or effects due to such estate, and to give discharges for the same, such persons or person giving security in the usual manner, duly to account for the same.

Stock belonging to the estate of the deceased may be transferred into the name of the Accountant General in Chancery, in trust for such purposes as the Court shall direct in any suit.

V. And be it further enacted, that it shall be lawful for the accountant-general of the High Court of Chancery, or for the secretary, or deputy secretary, of the governor and company of the Bank of England, to transfer, and for the governor and company of the Bank of England to suffer a transfer to be made of any stock belonging to the estate of such deceased person, into the name of the accountant-general, in trust, for such purposes as the Court shall direct, in any suit in which the person to whom such administration has been granted, shall be, or may have been, a party; provided, nevertheless, that if the executors or executor capable of acting as such, shall return to and reside within the jurisdiction of any of the said Courts pending such suit, such executors or executor shall be made party to such suit, and the costs incurred by granting such administration, and by proceeding in such suit against such administrator, shall be paid by such person or persons, or out of such fund as the Court where such suit is depending shall direct.

Executors returning to reside within jurisdiction of the Court, to be made a party in such suit.

Where an infant is sole executor, administration to be granted to the guardian, &c.

VI. And whereas inconveniences arise from granting probate to infants under the age of twenty-one; be it enacted, that where an infant is sole executor, administration, with the will annexed, shall be granted to the guardian of such infant, or to such other person as the Spiritual Court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him.

who shall have the same power as where administration

VII. And be it enacted, that the person to whom such administration shall be granted, shall have the same powers

vested in him as an administrator now hath by virtue of an administration granted to him durante minore etate of the next of kin.

38 Geo. 3, c. 87.
tion is granted durante minore etate of the next of kin.

31 & 32 VICT. c. 90.

An Act to empower certain Public Departments to pay otherwise than to Executors or Administrators small Sums due on account of Pay or Allowances to Persons deceased.
[31st July, 1868.]

31 & 32 Vict.
c. 90.

WHEREAS by several Acts of Parliament power is given to the Commissioners of the Admiralty, and the Secretary of State for War, and the Commissioners of Chelsea Hospital, to cause to be paid to persons who may not have been authorized by law to act as executors or administrators of deceased persons, limited sums of money due in respect of naval and military services to such deceased persons :

And whereas it is expedient to extend the power so given, so far as the military service is concerned, and to provide for the similar payment of sums due in respect of civil services :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

1. On the death of any person or persons to whom respectively any sum or sums of money not exceeding one hundred pounds may be payable by a public department in respect of civil pay, or allowances, or annuities granted under authority of parliament, it shall be lawful for the commissioners of her Majesty's treasury, or for such departments as may be deputed by such commissioners, to exercise like powers in reference to claims payable upon their orders respectively, on being satisfied of the expediency of dispensing with probate or letters of administration, to authorize the payment of such sum or sums to such person or persons as the said commissioners or departments may consider entitled thereto, without requiring the production of probate or of letters of administration, payment to be made under such regulations as to the said commissioners may seem fit.

Treasury, &c.
may, on death of persons in civil service entitled to sums under 100*l*, direct payment thereof without production of letters of administration.

2. In the case of any civil or military allowances chargeable to the army votes and of army prize money, the sum, not exceeding one hundred pounds, due at the death of a claimant, may be dealt with by the Secretary of State for War, or the Commissioners of Chelsea Hospital, in accordance with the enactments already in force with respect to sums of lesser amount similarly due.

Extension of powers of War Department as to such payments to sums under 100*l*.

3. Any payment made in pursuance of this act shall be valid against all persons whatever, and all persons acting under its provisions shall be absolutely discharged from all liability in respect of any monies duly paid or applied by them under this act.

Indemnity.

STATUTES RELATING TO THE GRANTING OF PROBATES AND LETTERS OF AD- MINISTRATION.

20 & 21 VICT. c. 77 (COURT OF PROBATE ACT, 1857).

C. P. A. 1857. *An Act to amend the Law relating to Probates and Letters of Administration in England.* [25th August, 1857.]

WHEREAS it is expedient that all jurisdiction in relation to the grant and revocation of probates of wills and letters of administration in England should be exercised in the name of her Majesty, by one Court: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Commencement of act.

I. This act (except where otherwise specially provided) shall come into operation on such day, not sooner than the first day of January, one thousand eight hundred and fifty-eight, as her Majesty shall by order in council appoint, provided that such order shall be made one month at least previously to the day so to be appointed.

Interpretation of terms.

II. In the construction of this act, unless the context be inconsistent with the meaning hereby assigned—

“Will” shall comprehend “testament” and all other testamentary instruments of which probate may now be granted:

“Administration” shall comprehend all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes :

“Matters and causes testamentary” shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration :

“Common form business” shall mean the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court of Probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the Court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration. .

Testamentary jurisdiction of Ecclesiastical and

III. The voluntary and contentious jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial, and other

Courts and persons in England now having jurisdiction or authority to grant or revoke probate of wills, or letters of administration, of the effects of deceased persons, shall, in respect of such matters, absolutely cease; and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such Court or person.

C. P. A. 1857.
other Courts
abolished.

IV. The voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in or which can be exercised by any Court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in her Majesty, and shall, except as hereinafter is mentioned, be exercised in the name of her Majesty in a Court to be called the Court of Probate, and to hold its ordinary sittings and to have its Principal Registry at such place or places in London or Middlesex as her Majesty in council shall from time to time appoint.

Testamentary
jurisdiction to be
exercised by a
Court of Pro-
bate (a).

V. There shall be one Judge of her Majesty's Court of Probate; and it shall be lawful for her Majesty, from time to time, by letters patent under the great seal of the United Kingdom, to appoint a person, being or having been an advocate of ten years' standing, or a barrister-at-law of fifteen years' standing, to be such Judge.

Power to her Ma-
jesty to appoint a
Judge of the Court
of Probate (b).

VI. The Judge of the Court of Probate shall hold his office during good behaviour, provided that it shall be lawful for her Majesty to remove any such Judge from his office upon an address of both houses of parliament.

Judge's tenure of
office.

VII. Every Judge of the Court of Probate shall, before executing any of the duties of his office, take the following oath, which the Lord Chancellor, or the Master of the Rolls for the time being, is hereby respectively authorized and required to administer:

Judge before act-
ing to take the
following oath.

"I, A. B., do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and power, execute the office of Judge of the Court of Probate.

"So help me God."

VIII. The Judge shall have rank and precedence with the puisne Judges of her Majesty's Superior Courts of Common Law at Westminster, according to the date of his appointment, and he shall have a secretary and usher, to be from time to time appointed and removed by him at his pleasure.

Rank and prece-
dence of Judge,
who shall appoint
a secretary and
usher.

IX. There shall be paid to the Judge the net yearly salary of four thousand pounds, and to his secretary the net yearly salary

Salaries of Judge,
secretary and
usher.

(a) C. P. A. 1858, s. 10, "County Court Jurisdiction."
(b) C. P. A. 1858, s. 1.

C. P. A. 1857. of three hundred pounds, and to his usher the net yearly salary of one hundred and fifty pounds.

Judge of Court of Probate to be also Judge of the Admiralty Court on the next vacancy.

X. Upon the next vacancy in the office of Judge of the High Court of Admiralty of England, it shall be lawful for her Majesty, if she so think fit, to appoint the person then being Judge of the Court of Probate, to be also Judge of the said Court of Admiralty, or in case the office of Judge of the Court of Probate become vacant before the office of Judge of the Court of Admiralty, the Judge of the Court of Admiralty may, with his consent, be appointed to and hold also the office of Judge of the Court of Probate, and after the union of the said two offices they shall be thenceforth held by the same person.

As to increase of salary upon union of the two offices.

XI. From and after the union under this act of the two offices of Judge of the Court of Probate and Judge of the Court of Admiralty in the same person, the said yearly salary of four thousand pounds payable under this act shall be increased to five thousand pounds, and the salary now payable to the Judge of the Court of Admiralty shall cease.

Retiring pensions of Judges.

XII. Her Majesty, by letters patent under the great seal of the United Kingdom, may grant unto any person executing the office of Judge of her Majesty's Court of Probate an annuity, not exceeding two thousand pounds, or if such person be also executing the office of Judge of the said Court of Admiralty, not exceeding three thousand five hundred pounds, to commence immediately after the day when the person to whom such annuity shall be granted shall resign the said office or offices, and to continue during his natural life; provided that her Majesty may, in and by such letters patent, limit the duration of payment of such annuity, or any part thereof, to such periods of time during the natural life of such person in which he shall not exercise any office of profit under her Majesty, so that such annuity, together with the salary and profits of such other office, shall together not exceed in the whole the said sum of two thousand pounds, or three thousand five hundred pounds, as the case may be: provided also, that no annuity granted to any person having executed the office of Judge under this act, except the present Judge of the Prerogative Court, shall be valid, unless such person shall have held such office for the period of fifteen years, or have held such office and any of the offices of Judge in any of the Superior Courts of Law or Equity, or the High Court of Admiralty, for periods amounting together to fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office, which shall be distinctly recited in the said grant.

District registries to be established as in Schedule (A.)

XIII. There shall be established for each of the districts specified in Schedule (A.) to this act, and at the places respectively mentioned in such schedule, a public Registry attached to and under the control of the Court of Probate, hereinafter referred to as "the District Registry."

XIV. There shall be three Registrars, two record keepers, and one sealer for the Principal Registry of the Court of Probate, and there shall be one District Registrar for each District Registry hereinafter referred to as the District Registrar, and there shall be so many clerks and other officers for the Court and the Principal Registry as the Judge of the Court, with the sanction of the commissioners of her Majesty's treasury, may, from time to time, think fit: provided, that if at any time it appear to her Majesty in council that the duties of the Registrars of the Principal Registry of the Court of Probate can be performed by two Registrars, it shall be lawful for her Majesty by order in council to direct that the number of Registrars for such Principal Registry be reduced accordingly.

C. P. A. 1857.

Appointment of
officers of the
Court of Pro-
bate (c).

XV. Charles Dyneley, esquire, John Iggulden, esquire, and William F. Gostling, esquire, the present Deputy Registrars of the Prerogative Court of Canterbury, shall, if willing to accept the office, be the first Registrars of the Principal Registry of the Court of Probate; Joseph Todd and John Smith, the present record keepers of the said Prerogative Court, shall, if willing to accept the office, be the first record keepers at the said Principal Registry; and William John Berry, the present sealer of the said Prerogative Court, shall, if willing to accept the office, be the first sealer at the said Principal Registry; and George Jarvis Foster, clerk of the papers in the said Prerogative Court, shall, if willing to accept the office, be the first clerk of papers at the said Principal Registry.

As to appointment
of the first officers
of the Principal
Registry.

XVI. The other clerks and officers now employed in the said Prerogative Court shall be transferred to such situations in the Court of Probate and the Principal Registry thereof as the Lord Chancellor may in that behalf direct, so that their duties may be such as in the opinion of the said Lord Chancellor may be as nearly as possible similar to those which they have heretofore discharged in the said Prerogative Court: provided always, that no such clerk or other officer shall be so transferred whom the said Lord Chancellor shall consider to be from age, infirmity, or other cause incompetent to the discharge of his duties.

Clerks and officers
of Prerogative
Court to be trans-
ferred to like
offices in Court of
Probate.

XVII. The Registrar or deputy Registrar (as the case may be) now executing in person the duties of Registrar of a diocesan or other Court exercising testamentary jurisdiction at any place at which a District Registry is to be established under this act, or where there is more than one such Registrar or deputy Registrar so acting, such one of them as the Judge shall select shall be appointed the first District Registrar for such district, save where the Judge shall consider such Registrar or deputy Registrar, or all such Registrars or deputy Registrars if more than one, to be from age, infirmity, or other cause incompetent to the discharge of the duties of District Registrar; provided that where there is

Existing Diocesan
Registrars to be
entitled to be ap-
pointed District
Registrars at the
same places.

(c) C. P. A. 1858, s. 6.

C. P. A. 1857. now more than one such Registrar or deputy Registrar competent to the discharge of the duties, the Judge may appoint them or more than one of them to hold such office of District Registrar jointly with benefit of survivorship.

As to appointment to offices. XVIII. The Registrars, District Registrars, and other officers of the Court of Probate, except as herein provided, shall be appointed by the Judge : there shall be paid to the several officers

Salaries of officers. mentioned in Schedule (B.) to this act the several salaries set opposite to their respective titles in the same schedule, and the said District Registrars shall, for the performance of their duties under this act, including the services of any clerks they may employ, be entitled to take in respect of the business in their respective District Registries such fees as shall be fixed as hereinafter provided ; and, except as aforesaid, there shall be paid to the several clerks and other officers appointed under this act such salaries or other remuneration as the Judge, with the consent of the commissioners of her Majesty's treasury, shall from time to time in each case direct.

Tenure of office of officers. XIX. The Registrars and District Registrars shall hold their offices during good behaviour, subject to be removed by order of the Lord Chancellor for some reasonable cause to be in such order expressed, and the other officers of the Court may be removed by the Judge, with the sanction of the Lord Chancellor.

Qualification of Registrars and District Registrars. XX. No person shall be appointed a Registrar or District Registrar who shall not be or have been an advocate, barrister-at-law, proctor, solicitor, or attorney-at-law, unless at the time of the passing of this act he is performing in person the duties of Registrar or deputy Registrar of some Ecclesiastical Court in England, or is acting as articled clerk or paid clerk to a proctor in Doctors' Commons, or as officer or clerk in the office of the said Prerogative Court, or of the Prerogative Court of York, or of any Diocesan Court.

Officers of the Court to execute their offices in person. XXI. All Registrars, District Registrars, officers, and clerks of the Court of Probate shall execute their respective offices in person and not by deputy ; and no Registrar of the Principal Registry of the Court, nor any officer or clerk in the Principal Registry thereof, shall during the time of his holding such office directly or indirectly practise as an advocate, barrister, proctor, solicitor, or attorney, or receive or participate in the fees of any other person so practising.

Registrars, &c. not to act as proctors, &c. XXII. The Judge shall cause to be made seals for the Court of Probate, that is to say, one seal to be used in its Principal Registry and separate seals to be used in the several District Registries, and may cause the same respectively from time to time to be broken, altered, and renewed at his discretion ; and all probates, letters of administration, orders, and other instruments, and exemplifications and copies thereof respectively,

Power to Judge to cause seals of the Court to be provided.

purporting to be sealed with any seal of the Court of Probate, shall in all parts of the United Kingdom be received in evidence without further proof thereof. C. P. A. 1857.

XXIII. The Court of Probate shall be a Court of Record, and such Court shall have the same powers, and its grants and orders shall have the same effect, throughout all England, and in relation to the personal estate in all parts of England, of deceased persons, as the Prerogative Court of the Archbishop of Canterbury and its grants and orders respectively now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said Prerogative Court; and all duties which, by statute or otherwise, are imposed on or shall be performed by ordinaries generally, or on or by the said Prerogative Court, in respect of probates, administrations, or matters or causes testamentary within their respective jurisdictions, shall be performed by the Court of Probate: provided that no suits for legacies, or suits for the distribution of residues, shall be entertained by the Court, or by any Court or person whose jurisdiction as to matters and causes testamentary is hereby abolished.

The Court to have throughout all England the same powers as the Prerogative Court within the province of Canterbury.

Suits for legacies or distribution not to be entertained.

XXIV. The Court of Probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; and the Court may by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences, or writings, in the same form, or nearly as may be, as that in which a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by any of her Majesty's Superior Courts of Law at Westminster; and every person disobeying any such writ shall be considered as in contempt of the Court, and also be liable to forfeit a sum not exceeding one hundred pounds.

Power to examine witnesses.

As to production of deeds, &c.

[*Extended to Registrars, C. P. A. 1858, s. 23.*]

XXV. The Court of Probate shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees, and judgments made or given by the Court under this act, and otherwise in

Powers of the Court to enforce orders.

C. P. A. 1857. relation to the matters to be inquired into and done by or under the orders of the Court under this act as are by law vested in the High Court of Chancery for such purposes in relation to any suit or matter depending in such Court.

Order to produce any instrument purporting to be testamentary.

XXVI. The Court of Probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the Court with respect to any probate or administration, order any person to produce and bring into the Principal or any District Registry, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open Court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made such default; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the Court.

Registrars, &c. to have power to administer oaths.

XXVII. The Registrars and District Registrars shall respectively have full power to administer oaths; and all persons who at the commencement of this act shall be acting as surrogates of any Ecclesiastical Court, and any other persons whom the Judge shall, under the seal of the Court, from time to time appoint, shall respectively have full power to administer oaths and perform such other duties in reference to matters and causes testamentary as may be assigned to them from time to time by the rules and orders under this act; and the persons so appointed shall be styled "Commissioners of her Majesty's Court of Probate;" provided, that any party required to be examined, or any person called as a witness or required or desiring to make an affidavit or deposition under or for the purposes of this act, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under the Common Law Procedure Act, 1854, in cases within the provisions of that act: and any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely in any affidavit or deposition before the Court of Probate or before any Registrar, District Registrar, or Commissioner of the

Power to appoint, also, commissioners to administer oaths, &c.

Court, shall be liable to the penalties and consequences of wilful and corrupt perjury. C. P. A. 1857.

XXVIII. If any person forge the signature of any Registrar, District Registrar, or Commissioner for taking oaths, or forge or counterfeit any seal of the Court of Probate, or knowingly use or concur in using any such forged or counterfeit signature or seal, or tender in evidence any document with a false or counterfeit signature of such Registrar, District Registrar, or Commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life or any term not less than seven years, or to imprisonment for any term not exceeding three years, with or without hard labour.

Penalty on forging or counterfeiting seals or signatures of officers.

XXIX. The practice of the Court of Probate shall, except where otherwise provided by this act, or by the rules or orders to be from time to time made under this act, be, so far as the circumstances of the case will admit, according to the present practice in the Prerogative Court.

Practice of the Court.

XXX. And to the intent and end that the procedure and practice of the Court may be of the most simple and expeditious character, it shall be lawful for the Lord Chancellor, at any time after the passing of this act, with the advice and assistance of the Lord Chief Justice of the Court of Queen's Bench or any one of the Judges of the Superior Courts of Law to be by such Chief Justice named in that behalf, and of the Judge of the said Prerogative Court, to make rules and orders, to take effect when this act shall come into operation, for regulating the procedure and practice of the Court, and the duties of the Registrars, District Registrars, and other officers thereof, and for determining what shall be deemed contentious and what shall be deemed non-contentious business, and, subject to the express provisions of this act, for fixing and regulating the time and manner of appealing from the decisions of the said Court, and generally for carrying the provisions of this act into effect; and after the time when this act shall come into operation it shall be lawful for the Judge of the Court of Probate from time to time, with the concurrence of the Lord Chancellor and the said Lord Chief Justice, or any one of the Judges of the Superior Courts of Law to be by such Chief Justice named in this behalf, to repeal, amend, add to, or alter any such rules and orders as to him, with such concurrence as aforesaid, may seem fit.

Rules and Orders to be made for regulating the procedure of the Court.

XXXI. Subject to the regulations to be established by such rules and orders as aforesaid, the witnesses, and where necessary the parties, in all contentious matters where their attendance can be had, shall be examined orally by or before the Judge in open Court; provided always, that, subject to any such regula-

Mode of taking evidence in contentious matters.

C. P. A. 1857. tions as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open Court as aforesaid, and after such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Court may issue commissions or give orders for examination of witnesses abroad, or who are unable to attend.

XXXII. Provided, that where a witness in any such matter is out of the jurisdiction of the Court, or where, by reason of his illness or otherwise, the Court shall not think fit to enforce the attendance of the witness in open Court, it shall be lawful for the Court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the Court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said Court, or other person to be named in such order for the purpose; and all the powers given to the Courts of Law at Westminster by the Acts of the thirteenth year of King George the Third, chapter sixty-three, and of the first year of King William the Fourth, chapter twenty-two, for enabling the Courts of Law at Westminster to issue commissions and give orders for the examination of witnesses in actions depending in such Courts, and to enforce such examination, and all the provisions of the said acts, and of any other acts for enforcing or otherwise applicable to such examination, and the witnesses examined, shall extend and be applicable to the said Court of Probate and to the examination of witnesses under the commissions and orders of the said Court, and to the witnesses examined, as if such Court were one of the Courts of Law at Westminster, and the matter before it were an action pending in such Court.

Rules of evidence in Common Law Courts to be observed.

XXXIII. The rules of evidence observed in the Superior Courts of Common Law at Westminster shall be applicable to and observed in the trial of all questions of fact in the Court of Probate.

Common Law Judges may sit, on request of Judge of Court.

XXXIV. It shall be lawful for the Judge of the Court of Probate to sit, with the assistance of any Judge or Judges of any of the Superior Courts of Law at Westminster, who, upon the request of the Judge of the Court of Probate, may find it convenient to attend for that purpose.

Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a Court of Law.

XXXV. It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this act to be tried by a special or common jury before the Court itself, or by means of an issue to be directed to any of the Superior Courts of Common Law, in the same manner as an issue may now be directed by the Court of Chancery, and such question shall be so tried by a jury in any case where an heir-

at-law, cited or otherwise made party to the suit or proceeding, makes application to the Court of Probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the Court shall refuse to cause such question to be tried by a jury, such refusal of the Court shall be subject to appeal as herein provided. C. P. A. 1857.

XXXVI. When the Court shall order a question of fact to be tried before itself by a jury, the Court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the Superior Courts of Common Law at Westminster, and may also make any other orders which to such Court may seem requisite; and every such jury shall consist of persons possessing the qualifications, and shall be struck, summoned, balloted for, and called in like manner as if such jury were a jury for the trial of any cause in any of the said Superior Courts; and every jurymen so summoned shall be entitled to the same rights and subject to the same duties and liabilities as if he had been duly summoned for the trial of any such cause in any of the said Superior Courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the trial of questions of fact by a jury before the Court itself, and in respect of new trials thereof, and also for all purposes in relation to or consequential upon the direction of issues, the Court of Probate shall have the same jurisdiction, powers, and authority in all respects as belong to any Superior Court of Common Law, or to any Judge thereof, or to the High Court of Chancery, or any Judge thereof, for the like purposes. Powers of the Court for the trial of questions by a jury.

XXXVII. When any such question shall be so ordered to be tried by a jury before the Court itself, such question shall be reduced into writing in such form as the Court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the Court of Probate shall have the same powers, jurisdiction, and authority as belong to any Judge of any of the said Superior Courts sitting at Nisi Prius. Question to be stated, and jury sworn to try it.

XXXVIII. Where the Court of Probate directs an issue, it shall be lawful for such Court to direct such issue to be tried either before a Judge of Assize in any county or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the Court of Chancery. Court, on trial, to have the same authority as a Judge at Nisi Prius. Court may direct where issue shall be tried.

C. P. A. 1857.

Appeal to the
House of Lords.

XXXIX. Any person considering himself aggrieved by any final or interlocutory decree or order of the Court of Probate may appeal therefrom to the House of Lords: provided always, that no appeal from any interlocutory order of the Court of Probate shall be made without leave of the Court of Probate first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree.

Advocates ad-
mitted to practice.Barristers may
practice in conten-
tious causes.Extended to all
causes and matters
whatsoever (*d*).

XL. All persons who at the time of the passing of this act have been admitted advocates in any of the Ecclesiastical Courts shall be entitled to practice as advocates or counsel in all matters and causes whatsoever in the Court of Probate; and all serjeants and barristers-at-law shall be entitled to practice as advocates or counsel in all contentious matters and causes in the said Court; and such persons who have been so admitted advocates and serjeants and barristers-at-law shall have respectively the same rank and precedence which they now have before the Judicial Committee of the Privy Council, unless and until her Majesty shall otherwise order.

Advocates ad-
mitted to practice
as barristers.

XLI. All persons who at the time of the passing of this act have been admitted as advocates as aforesaid shall be entitled to practice as counsel in any of her Majesty's Courts of Law or Equity in England, with the same eligibility to appointments, under Acts of Parliament or otherwise, as if they had respectively been duly called to the degree of barrister-at-law on the days on which they respectively were so admitted as advocates, and with the same rank and precedence which they now have before the said Judicial Committee, unless and until her Majesty shall otherwise order.

Proctors admitted
to practice.

XLII. Every person who at the time of the passing of this act is actually admitted and practising as a proctor in the Courts in Doctors' Commons, or in the Prerogative Court of York, or in any Diocesan Court, or in any Archidiaconal Court, having previously duly served under articles of clerkship either to an attorney or proctor, may, upon his application, at any time within one year after the passing of this act, be admitted a proctor of the Court of Probate, without payment of any fee or stamp duty.

Admission of Re-
gistrars and
proctors as solic-
tors.

XLIII. Every person who at the time of the commencement of this act is acting as Registrar or Deputy Registrar of any Ecclesiastical Court, or is actually admitted and practising as a proctor in the Courts in Doctors' Commons, or in any Ecclesiastical Court in England or Wales, may, within one year after the passing of this act, be admitted, without the payment of any stamp duty, fee, charge, or gratuity whatsoever, as a solicitor of the High Court of Chancery, upon the production of his

(*d*) C. P. A. 1858, s. 2.

appointment or admission as such Registrar, Deputy Registrar, or proctor, or an official certificate thereof; and upon the production of an official certificate that such appointment or admission continued in force at the time of the passing of this act, and upon signing the roll of solicitors of the High Court of Chancery, but not otherwise, such person shall be entitled to be admitted as a solicitor of such Court, and to be afterwards in like manner admitted and enrolled as an attorney of her Majesty's Superior Courts.

C. P. A. 1857.

XLIV. Every person who at the time of the commencement of this act has served or is actually serving as an articled clerk to a proctor entitled to take such articled clerk, and who has not been admitted as a proctor, shall be entitled to be admitted as a solicitor of the High Court of Chancery, in the same manner, and subject to the same rules and regulations, and upon the same conditions, as if he had before the commencement of this act been articled to a solicitor or to an attorney-at-law; and such admission shall entitle such articled clerk so admitted as a solicitor to be afterwards in like manner admitted and enrolled as an attorney of her Majesty's Superior Courts: provided, that if any such proctor to whom any such clerk is now articled shall retire from practice after the passing of this act, he shall and is hereby required to transfer such articled clerk to some other proctor, or to a solicitor, or to an attorney-at-law, for the unexpired term of his articles of clerkship; provided that the Court shall at any time have the same power to transfer such clerk during the unexpired term of his articles of clerkship, to any other proctor, or to a solicitor, or to an attorney-at-law as the Judge of the Prerogative Court now has in respect to clerks articled to proctors practising in the Court of Arches.

Admission of
articled clerks to
proctors as solicitors.

XLV. All solicitors and attornies-at-law may practice in the Court of Probate, and the laws and statutes now in force concerning solicitors and attornies shall extend to solicitors and attornies practising in the said Court; and the commissioners for taking oaths in the High Court of Chancery shall be commissioners for taking oaths in the Court of Probate.

Practitioners.

XLVI. Probate of a will or letters of administration may, upon application for that purpose to the District Registry, be granted in common form by the District Registrar in the name of the Court of Probate and under the seal appointed to be used in such District Registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly.

Probates and administration may be granted in common form by District Registrars, if it shall appear by affidavit that the testator, &c. had a fixed place of abode.

C. P. A. 1857.

Affidavit to be
conclusive for
authorizing grant
of probate.

XLVII. Such affidavit shall be conclusive for the purpose of authorizing the grant, by the District Registrar, of probate or administration ; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the district at the time of his death ; and every probate and administration granted by any such District Registrar shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder, notwithstanding the want of or defect in such affidavit, as is hereby required.

District Registrars
not to make
grants where
there is conten-
tion, &c.

XLVIII. The District Registrar shall not grant probate or administration in any case in which there is contention as to the grant until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.

As to transmis-
sion of notice of
application for
grants of probate,
&c. to District
Registrar.

XLIX. Notice of every application to any District Registrar for the grant of probate or administration shall be transmitted by such District Registrar to the Registrars of the Principal Registry by the next post after such application shall have been made ; and such notice shall specify the name and description, or addition (if any), of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit made in support of such application, and the name of the person by whom the application has been made, and such other particulars as may be directed by rules or orders under this act ; and no probate or administration shall be granted in pursuance of such application until such District Registrar shall have received a certificate, under the hand of one of the Registrars of the Principal Registry, that no other application appears to have been made in respect of the goods of the same deceased person, which certificate the said Registrar of the Principal Registry shall forward as soon as may be to the District Registrar ; all such notices in respect of applications in the District Registries shall be filed and kept in the Principal Registry, and the Registrars of the Principal Registry shall, with reference to every such notice, examine all notices of such applications which may have been received from the several other District Registries, and the applications which may have been made for grants of probate or administration at the Principal Registry, so far as it may appear necessary to ascertain whether or no application for probate or administration, in respect of the goods of the same deceased person, may have been made in more than one Registry, and shall communicate with the District Registrars as occasion may require in relation to such applications.

District Registrar
in case of doubt as

L. In every case where it appears to a District Registrar that it is doubtful whether the probate or letters of administra-

tion which may be applied for should or should not be granted, or where any question arises in relation to the grant, or application for the grant, of any probate or administration, the District Registrar shall transmit a statement of the matter in question to the Registrars of the Court of Probate, who shall obtain the directions of the Judge in relation thereto, and the Judge may direct the District Registrar to proceed in the matter of the application according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Registrar in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Court of Probate through its Principal Registry, or, if the case be within its jurisdiction, to a County Court.

C. P. A. 1857.

to grant to take
the directions of
the Judge.

LI. On the first Thursday of every month, or oftener if required by any rules or orders to be made in that behalf, every District Registrar shall transmit to the Registrars of the Principal Registry a list, in such form and containing such particulars as may be from time to time required by the Court of Probate, or by any rules or orders under this act, of the grants of probate and administration made by such District Registrar up to the last preceding Saturday, and not included in a previous return, and also a copy, certified by the District Registrar to be a correct copy, of every will to which any such probate or administration relates.

District Registrars
to transmit lists
of probates and
administrations,
and copies of
wills.

LII. Every District Registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him, in the Public Registry of the district, subject to such regulations as the Judge of the Court of Probate may from time to time make in relation to the due preservation thereof, and the convenient inspection of the same.

District Registrars
to preserve original
wills.

LIII. Caveats against the grant of probates or administrations may be lodged in the Principal Registry or in any District Registry, and (subject to any rules or orders under this act) the practice and procedure under such caveats in the Court of Probate shall, as near as may be, correspond with the practice and procedure under caveats now in use in the Prerogative Court of Canterbury; and immediately upon a caveat being lodged in any District Registry, the District Registrar shall send a copy thereof to the Registrars to be entered among the caveats in the Principal Registry; and immediately upon a caveat being entered in the Principal Registry, notice thereof shall be given to the District Registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other District Registrar to whom it may appear to the Registrar of the Principal Registry expedient to transmit the same.

As to caveats.

B.

C C

C. P. A. 1857.

Registrar of
County Court to
transmit certifi-
cate of decree for
grant or revoca-
tion of probate.

LIV. [Repealed by C. P. A. 1858, s. 11.]

LV. On a decree being made by a Judge of a County Court for the grant or revocation of a probate or administration in any such cause, the Registrar of the County Court shall transmit to the District Registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode a certificate under the seal of the County Court of such decree having been made, and thereupon, on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such District Registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the District Registrar according to the effect of such decree.

The Judge of the
County Court to
decide causes and
enforce judgments
as in other cases.

LVI. The Judge of any County Court before whom any disputed question shall be raised relating to matters and causes testamentary under this act shall, subject to the rules and orders under this act, have all the jurisdiction, power, and authority to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the County Court.

Affidavit of the
facts giving the
County Court
jurisdiction to be
conclusive, unless
disproved while
the matter is
pending.

LVII. The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the Judge of a County Court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorizing the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such Judge; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such Judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: provided, that where it shall be shown to the Judge of a County Court before whom any matter is pending under this act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly stated would not have authorized him to exercise such contentious jurisdiction, he shall stay all further proceedings in his Court in the matter, leaving any party to apply to the Court of Probate for such grant or revocation, and making

such order as to the costs of the proceedings before him as he may think just. C. P. A. 1857.

LVIII. Any party who shall be dissatisfied with the determination of the Judge of the County Court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this act, may appeal from the same to the Court of Probate, in such manner and subject to such regulations as may be provided by the rules and orders to be made under this act, and the decision of the Court of Probate on such appeal shall be final.

As to appeals from County Court.

LIX. It shall not be obligatory on any person to apply for probate or administration to any District Registry, or through any County Court, but in every case such application may be made through the Principal Registry of the Court of Probate, wherever the testator or intestate may at the time of his death have had his fixed place of abode: provided, that where in any contentious matter arising out of any such application it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the Judge of a County Court, the Court of Probate may send the cause to such County Court, and the Judge thereof shall proceed therein as if such application and cause had been made to and arisen in his Court in the first instance.

Not obligatory to apply for probate, &c. to District Registries or County Court, but may in every case be made to Court of Probate.

[*Extended to revocations of grants, C. P. A. 1858, s. 12.*]

LX. For regulating the procedure and practice of the County Courts, and the Judges, Registrars, and officers thereof, in relation to their jurisdiction and proceedings under this act, rules and orders may be from time to time framed, amended, and certified by the County Court Judges appointed for the time being to frame rules and orders for regulating the practice of the County Courts under the act of the session holden in the nineteenth and twentieth years of her Majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered, and shall be in force from the day named for that purpose by the Lord Chancellor, as in the said act is provided in relation to other rules and orders regulating the practice of the same Courts; and for establishing rules and orders to be in force when this act comes into operation, the power given by this enactment shall be exercised as soon as conveniently may be after the passing of this act.

Rules and Orders for regulating the procedure of County Courts under the act to be made by the Judges now having authority for the like purpose.

LXI. Where proceedings are taken under this act for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this act the validity of a will is disputed, unless in the several cases aforesaid the will affects only personal estate, the heir-at-law, devisees and other persons having or pretending interest in the real estate affected by the will shall, subject to the provisions of this act, and to the rules

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

C. P. A. 1857. and orders under this act, be cited to see proceedings, or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such rules and orders, and to the discretion of the Court.

Where the will is proved in solemn form, or its validity otherwise decided on, the decree of the Court to be binding on the persons interested in the real estate.

LXII. Where probate of such will is granted after such proof in solemn form, or where the validity of the will is otherwise declared by the decree or order in such contentious cause or matter as aforesaid, the probate, decree, or order respectively shall enure for the benefit of all persons interested in the real estate affected by such will, and the probate copy of such will, or the letters of administration with such will annexed, or a copy thereof respectively, stamped with the seal of her Majesty's Court of Probate, shall in all Courts, and in all suits and proceedings affecting real estate, of whatever tenure (save proceedings by way of appeal under this act, or for the revocation of such probate or administration), be received as conclusive evidence of the validity and contents of such will, in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked, on the ground of the invalidity of the will, or the invalidity of the will is otherwise declared by decree or order under this act, such decree or order shall enure for the benefit of the heir-at-law or other persons against whose interest in real estate such will might operate, and such will shall not be received in evidence in any suit or proceeding in relation to real estate, save in any proceeding by way of appeal from such decrees or orders.

Heir in certain cases not to be cited, and where not cited not to be affected by probate.

LXIII. Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person, unless it is shown to the Court and the Court is satisfied that the deceased was at the time of his decease seised of or entitled to or had power to appoint by will some real estate beneficially, or in any case where the will propounded or of which the validity is in question would not in the opinion of the Court, though established as to personalty, affect real estate, but in every such case, and in any other case in which the Court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the Court may proceed without citing the heir or other persons interested in real estate; provided that the probate, decree, or order of the Court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

LXIV. In any action at law or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the Court of Probate; and in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputed the validity of such devise or other testamentary disposition.

C. P. A. 1857.

Probate or office copy to be evidence of the will in suits concerning real estate, save where the validity of the will is put in issue.

LXV. In every case in which, in any such action or suit, the original will shall be produced and proved, it shall be lawful for the Court or Judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid.

As to costs of proof of will.

LXVI. There shall be one place of deposit under the control of the Court of Probate, at such place in London or Middlesex as her Majesty may by order in council direct, in which all the original wills brought into the Court or of which probate or administration with the will annexed is granted under this act in the Principal Registry thereof, and copies of all wills the originals whereof are to be preserved in the District Registries, and such other documents as the Court may direct, shall be deposited and preserved, and may be inspected under the control of the Court and subject to the rules and orders under this act.

Place of deposit of original wills.

LXVII. The Judge shall cause to be made from time to time in the Principal Registry of the Court of Probate calendars of the grants of probate and administration in the Principal Registry, and in the several District Registries of the Court for such periods as the Judge may think fit, each such calendar to contain a note of every probate or administration with the will annexed granted within the period therein specified, and also a note of every other administration granted within the same period, such respective notes setting forth the dates of such grants, the registry in which the grants were made, the names of the testators and intestates, the place and time of death, the

Judge to cause calendars to be made from time to time in the Principal Registry, and to be printed.

C. P. A. 1857. names and descriptions of the executors and administrators, and the value of the effects; and the calendars to be so made shall be printed as the same are from time to time completed.

Registrar to transmit printed copies to certain offices.

LXVIII. The Registrars shall cause a printed copy of every calendar to be transmitted through the post or otherwise to each of the District Registries, and to the office of her Majesty's Prerogative in Dublin, the office of the commissary of the county of Midlothian in Edinburgh, and such other offices, if any, as the Court of Probate shall from time to time by rule or order direct; and every printed copy of a calendar so transmitted as aforesaid shall be kept in the registry or office to which it is transmitted, and may be inspected by any person on payment of a fee of one shilling for each search, without reference to the number of calendars inspected.

Official copy of whole or part of will may be obtained.

LXIX. An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the Registry or District Registry where the will has been proved or the administration granted, on the payment of such fees as shall be fixed for the same by the rules and orders under this act.

Administration pendente lite.
[*Extended to appeals, C. P. A. 1868, s. 22.*]

LXX. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the Court, and act under its direction.

Receiver of real estate pendente lite.

[*The Court may require security from receivers, C. P. A. 1858, 21.*]

LXXI. It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the Court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the Court may direct.

Remuneration to administrators pendente lite and receivers.

LXXII. The Court of Probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court think fit.

Power as to appointment of administrator.

LXXIII. Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Ireland, and it shall

appear to the Court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who, if this act had not been passed, would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the person who, if this act had not passed, would by law have been entitled to a grant thereof, but it shall be lawful for the Court, in its discretion, to appoint such person as the Court shall think fit to be such administrator upon his giving such security (if any) as the Court shall direct, and every such administration may be limited as the Court shall think fit. C. P. A. 1857.

LXXIV. The provisions of an act passed in the thirty-eighth year of his late Majesty King George the Third, chapter eighty-seven, shall apply (in like manner) to all cases where letters of administration have been granted, and the person to whom such administration shall have been granted shall be out of the jurisdiction of her Majesty's Courts of Law and Equity.

38 Geo. 3, c. 87,
extended to ad-
ministrators.

LXXV. After any grant of administration no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased, as to the personal estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked.

After grant of ad-
ministration no
person to have
power to sue as an
executor.

LXXVI. Where before the revocation of any temporary administration any proceedings at law or in equity have been commenced by or against any administrator so appointed, the Court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration, and of the grant of probate or administration which shall have been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator, in like manner as if the proceeding had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such Court may direct.

Revocation of
temporary grants
not to prejudice
actions or suits.

LXXVII. Where any probate or administration is revoked under this act, all payments *bonâ fide* made to any executor or administrator under such probate or administration, before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made.

Payments under
revoked probates
or administration
to be valid.

LXXVIII. All persons and corporations making or per- Persons, &c.

C. P. A. 1857.

making payment upon probates granted for estate of deceased person to be indemnified.

Rights of an executor renouncing probate to cease as if he had not been named in the will.

Sureties to administration bonds.

Persons to whom grant of administration shall be committed shall give bond.

[Bonds given before 11th January, 1858, enure to the benefit of the Judge of this Court, C. P. A. 1858, s. 15.]

Penalty on bond.

Power of Court to assign bond.

mitting to be made any payment or transfer *bonâ fide*, upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.

LXXIX. Where any person after the commencement of this act renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.

LXXX. So much of an act passed in the twenty-first year of King Henry the Eighth, chapter five, and of an act passed in the twenty-second and twenty-third years of King Charles the Second, chapter ten, and of an act passed in the first year of King James the Second, chapter seventeen, as requires any surety, bond, or other security to be taken from a person to whom administration shall be committed, shall be repealed.

LXXXI. Every person to whom any grant of administration shall be committed shall give bond to the Judge of the Court of Probate to enure for the benefit of the Judge for the time being, and, if the Court of Probate or (in the case of a grant from the District Registry) the District Registrar shall require with one or more surety or sureties, conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct; provided that it shall not be necessary for the solicitor for the affairs of the Treasury or the solicitor of the Duchy of Lancaster applying for or obtaining administration to the use or benefit of her Majesty to give any such bond as aforesaid.

LXXXII. Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the Court or District Registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the Court or District Registrar so to do, and the Court or District Registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court or District Registrar shall think reasonable.

LXXXIII. The Court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the Registrars of the Court to assign the same to some person, to be named in such order, and such person, his executors or ad-

ministrators, shall thereupon be entitled to sue on the said bond in his own name, both at law and in equity, as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond. C. P. A. 1857.

LXXXIV. All suits, whether original or by way of appeal, which at the commencement of this act shall be pending in any Court in England respecting any grant of probate or administration, shall be transferred, with all the proceedings therein, to the Court of Probate, there to be dealt with and decided according to the rules and practice of the said Court, except so far as such Court may think it expedient to adopt, for the purposes of such transferred suits or any of them, the rules or practice of the Court in which the same shall have been pending, to which end the Court of Probate shall, for the purposes of such suits, have all the jurisdiction, power, and authority possessed by the Court from which such suit shall be transferred; but this enactment shall not apply to proceedings by way of appeal pending before her Majesty in council, which proceedings shall be carried on and prosecuted in the same manner in all respects as if this act had not passed; and every person who if this act had not passed might have appealed to her Majesty in council against any proceeding, decree or sentence of any Court respecting the grant of any probate or administration, may, notwithstanding this act, appeal to her Majesty in council against such proceeding, decree or sentence: provided also, that her Majesty in council may remit to the Court of Probate any cause or proceeding pending by way of appeal as aforesaid, or to be brought before her Majesty in council upon appeal as aforesaid, with such directions as the justice of the case may require. Pending suits transferred to Court of Probate. Not to apply to appeals pending before her Majesty in council.

LXXXV. Provided, that if at the commencement of this act any cause which would be transferred to the Court of Probate under the enactment hereinbefore contained shall have been heard before any Judge having jurisdiction in relation to such cause before the commencement of this act, and shall be standing for judgment, such Judge may, at any time within six weeks after the commencement of this act, give in to one of the Registrars of the Court a written judgment thereon, signed by him, and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of the Court of Probate on the day on which the same shall so be delivered to the Registrar, and shall be subject to appeal under this act. Power to Judges whose jurisdiction is determined to deliver written judgments.

LXXXVI. All grants of probates and administrations made before the commencement of this act, which may be void or Void and voidable probates and administrations.

C. P. A. 1857. voidable by reason only that the Courts from which respectively the same were obtained had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from Courts entitled to make such grants: provided that any such grants of probate or administration shall not be made valid by this act when the same shall before the commencement of this act have been revoked, or determined by any Court of competent jurisdiction to have been void; nor shall this act prejudice or affect any proceedings pending at the time of the passing of this act in which the validity of any such probate or administration shall be in question: if the result of such proceeding shall be to invalidate the same, such probate or administration shall not be rendered valid by this act; and if such proceedings abate or become defective by reason of the death of any party, any person who but for this act would have any right by reason of the invalidity of such probate or administration shall retain such right, and may commence proceedings for enforcing the same within six calendar months after the death of such party.

Probates and administrations granted before this act comes into operation.

LXXXVII. Legal grants of probate and administration made before the commencement of this act, and grants of probate and administration made legal by this act, shall have the same force and effect as if they had been granted under this act, but in every such case there shall be due and payable to her Majesty such further stamp duty, if any, as would have been chargeable on any probate or administration which but for this act would or ought to have been obtained in respect of the personal estate not covered by the grant; and all inventories and accounts in respect thereof shall be returnable to the Court of Chancery, and all bonds taken in respect thereof may be enforced by or under the authority of the Court of Chancery, at the discretion of the Court.

Probate or administration may be granted of personal estate not affected by the former grants.

LXXXVIII. Provided, that where any probate or administration has been granted before the commencement of this act, and the deceased had personal estate in England not within the limits of the jurisdiction of the Court by which the probate or administration was granted, or otherwise not within the operation of the grant, it shall be lawful for the Court of Probate to grant probate or administration only in respect of such personal estate not covered by any former probate or administration, and such grant may be limited accordingly.

Judges of present Ecclesiastical Courts and others to transmit all wills, &c. to the Registry.

[See C. P. A. 1858, s. 27.]

LXXXIX. The acting Judge and Registrar of every Court, and other person now having jurisdiction to grant probate or administration, and every person having the custody of the documents and papers of or belonging to such Court or person, shall, upon receiving a requisition for that purpose, under the seal of the Court of Probate, from a Registrar, and at the time and in the manner mentioned in such requisition, transmit to

the Court of Probate, or to such other place as in such requisition shall be specified, all records, wills, grants, probates, letters of administration, administration bonds, notes of administration, Court books, calendars, deeds, processes, acts, proceedings, writs, documents, and every other instrument relating exclusively or principally to matters or causes testamentary, to be deposited and arranged in the registry of each district or in the Principal Registry, as the case may require, so as to be easy of reference, under the control and direction of the Court. C. P. A. 1857.

XC. No Judge, Registrar, or other person who shall wilfully refuse or neglect so to transmit such records, wills, grants, probates, letters of administration, administration bonds, notes of administration, Court books, calendars, deeds, processes, acts, proceedings, writs, documents, or any other instrument relating to matters or causes testamentary, shall be entitled to any compensation under this act, and every Judge, Registrar, or other person so refusing or neglecting shall be liable to a penalty of one hundred pounds, to be sued for and recovered, together with full costs of suit, in any of her Majesty's Superior Courts, by the Registrars. Penalty for default.

XCI. One or more safe and convenient depository or depositories shall be provided, under the control and directions of the Court of Probate, for all such wills of living persons as shall be deposited therein for safe custody; and all persons may deposit their wills in such depository upon payment of such fees and under such regulations as the Judge shall from time to time by any order direct. As to depositories for safe custody of the wills of living persons.

XCII. Nothing in this act contained shall affect the stamp duties now by law payable upon probates and administrations; and all the clauses, provisions, rules, regulations, and directions contained in any Act of Parliament relating to the said duties, and to wills, probates of wills, and letters of administration, for securing the said duties, not superseded by or inconsistent with the express provisions of this act, shall be in full force, and shall be observed, applied, and put in execution for securing the duties payable on probates of wills and letters of administration granted under this act, as if such duties had been granted by this act, and the said clauses, provisions, rules, and regulations relating thereto were herein repeated and specially enacted. This act not to affect the stamp duties on probates and administrations.

XCIII. The Registrars of the Court of Probate shall, within such period as the Judge shall direct after probate of any will or letters of administration shall have been granted, deliver or cause to be delivered to the Commissioners of Inland Revenue, or their proper officer, the following documents respectively; that is to say, in the case of a probate or administration with a will annexed a copy of the will and the original affidavit, and in the case of letters of administration without a will annexed The Registrars to deliver copies of wills, &c. to the commissioners of inland revenue.

C. P. A. 1857. such original affidavit, and in every case of letters of administration a copy or extract thereof, and in every case such certificate or note of the grant as the said commissioners may require.

Sections 8 & 9 of
53 Geo. 3, c. 127,
repealed in part as
to the Court of
Probate.

XCIV. Whereas by an act passed in the fifty-third year of King George the Third, chapter one hundred and twenty-seven, it is enacted, that if any proctor of any Ecclesiastical Court shall act as such, or permit his name to be used in any suit appertaining to the office of a proctor, or in obtaining probates of wills or letters of administration, for or on account or for the profit or benefit of any person not entitled to act as a proctor, or shall permit any such person to participate in such profit or benefit, such proctor shall be subject to certain penalties therein mentioned ; and it is also therein further enacted, that if any person shall, in his own name, or in that of any other person, do or perform any act whatever belonging to the office of a proctor in consideration of any gain, fee or reward, or with a view to participate in the benefit to be derived from the office, functions, or practice of a proctor, without being admitted and enrolled, every such person shall be subject to certain other penalties therein mentioned : be it enacted, nothing in the said act contained shall prevent any proctor of the Court of Probate from acting as agent of any attorney or solicitor in relation to any matter testamentary, or from allowing him to participate in the profits of and incident thereto.

Fees to be taken
by officers of
Court and by
officers of County
Courts.

XCV. The Lord Chancellor, with such assistance as is hereinbefore provided as to rules and orders to be made in pursuance of this act, shall as soon as conveniently may be after the passing of this act, fix a table or tables of fees to be taken by the officers of the Court of Probate, and the proctors, solicitors, and attornies practising therein, including the District Registrars, and the proctors, solicitors, and attornies practising in District Registries, and of fees to be taken by the officers of the county courts, in respect of business under this act, and of fees to be payable in respect of searches, inspection, and printed and other copies of and extracts from records, wills, and other documents in the custody or under the control of the Court of Probate, and the Judge of the Court of Probate, with such concurrence as is hereinbefore provided in respect of the amendment of rules and orders, is hereby empowered, from time to time after this act shall come into operation, to add to, reduce, alter, or amend such table or tables of fees, as he may see fit : provided that such tables of fees and every alteration of the same, except so far as respects the fees which are to be taken by District Registrars, proctors, and others, for their own remuneration and to their own use, shall be subject to the approval of the Commissioners of her Majesty's Treasury ; and every such table of fees, and every addition, reduction, alteration, or amendment

to, in, or of the same, shall be published in the London Gazette; C. P. A. 1857. and no other fees than those specified and allowed in such tables of fees shall be demanded or taken by such officers, and proctors, solicitors, and attornies.

XCVI. The bill of any proctor, attorney, or solicitor, for any fees, charges or disbursements in respect of any business transacted in the Court of Probate, whether contentious or otherwise, or any matters connected therewith, shall, as well between proctor or attorney or solicitor and client as between party and party, be subject to taxation by any one of the Registrars of the said Court, and the mode in which any such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders to be made under this act, and the certificate of the Registrar of the amount at which such bill is taxed shall be subject to appeal to the Judge of the said Court. Taxation of costs.

XCVII. None of the fees payable to the officers of the Court of Probate, or of any County Court, in respect of business under this act, except the fees of the District Registrars (which are to be taken as their remuneration, and for their own use), the fees of proctors, solicitors, and attornies, and such fees as may be authorized to be taken for their own use by surrogates and commissioners for administering oaths, shall be received in money, but every such fee shall be collected and received by a stamp denoting the amount of the fee which otherwise would be payable. Fees not to be paid in money, but by stamps.

XCVIII. The fees to be collected by means of stamps under the provisions of this act shall be deemed "Stamp Duties," and shall be placed under the management of the Commissioners of Inland Revenue, to be collected and paid into the exchequer under the same laws and regulations as those made in respect of the other duties of "stamps," and the provisions in the several acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall in all cases not hereby expressly provided for be of full force and effect with respect to the stamps to be provided under or by virtue of this act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually, to all intents and purposes, as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively; but a separate and distinct account of all money received in respect of the said last-mentioned stamps for every year ending the thirty-first day of March shall be laid before both Houses of Parliament within Provisions of acts relating to stamps to be applicable to stamps for collecting fees.

C. P. A. 1857. one month after the termination of such year of accounts, or, if Parliament be not then sitting, within one month after the commencement of the next session of Parliament.

No document to be received or used unless stamped.

XCIX. No document which under this act, and any table of fees for the time being in force under this act, ought to have a stamp in respect of such fee impressed thereon or affixed thereto, shall be received or filed or be used in relation to any proceeding in the Court of Probate, or be of any validity for any purpose whatsoever, unless or until the same shall have the proper stamp impressed thereon or affixed thereto: provided that if at any time it shall appear that any such document has through mistake or inadvertence been received, or filed, or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the Judge of the Court of Probate, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto, in compliance with any such order, such document and every proceeding in reference thereto shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

Officers of the Court may be dismissed for fraud or wilful neglect in relation to stamps.

C. If any officer of the Court of Probate, or any other person employed under this act, shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this act, or to any fee or sum of money to be collected, or which ought to be collected, by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect, or omission whereby any fee or money which ought to be collected by means of a stamp under this act shall be lost, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment if the Judge of the Court of Probate shall think fit so to order.

Salary of Judge and compensation to be charged on consolidated fund.

CI. The salary of the Judge of the Court of Probate, and any retiring annuity granted to a Judge of the Court of Probate under this act, and all compensations payable under this act, shall be charged on and payable out of the Consolidated Fund of the United Kingdom.

Salaries and expenses not charged on the consolidated fund to be paid out of monies to be provided by Parliament.

CII. It shall be lawful for the Commissioners of her Majesty's Treasury, out of such monies as may be provided and appropriated by Parliament for the purpose, to cause to be paid all salaries payable to the Registrars, clerks, and other officers under this act, and all necessary expenses of the Court of Probate and its Registries, and other expenses which may be incurred in carrying the provisions of this act into effect (except such salary, retiring annuity, and compensations as are hereinbefore charged on the said Consolidated Fund).

Compensation to Registrars, &c. of existing Courts.

CIII. It shall be lawful for the Commissioners of the

Treasury to grant to any archdeacons, Judges, deputy Judges, Registrars, deputy Registrars, and other persons holding office in the Courts now exercising jurisdiction in matters and causes testamentary who may sustain any loss of emoluments by reason of the passing of this act, and who are not transferred or appointed by or under this act to offices of equal value in the Court of Probate, such compensation as, having regard to the tenure of their respective offices and appointments, and to the provisions of the act of the session holden in the sixth and seventh years of King William the Fourth, chapter seventy-seven, section twenty-five, and of the act of the session holden in the tenth and eleventh years of her Majesty, chapter ninety-eight, section nine, and the several subsequent acts continuing the provisions of the said acts respectively, the said commissioners deem just and proper to be awarded: provided that where persons whose claims in respect of offices, held for life or otherwise, are excluded by the said provisions, have executed in person the duties of such offices, the said provisions shall not be deemed to prevent the said commissioners from granting to such persons such compensation as the said commissioners would deem just and proper to be awarded on the abolition or reduction of emoluments of like offices, if held at the pleasure of the crown; and it shall be lawful for the said commissioners to grant to all managing and other clerks who have been continuously employed in the offices of Registrars of the said Courts for fifteen years and upwards immediately before the passing of this act, and may sustain any loss of emoluments as aforesaid, and are not transferred or appointed as aforesaid, such compensation as the said commissioners may deem just and proper: provided always, that if any person to whom any yearly sum is awarded for compensation as aforesaid is or shall be appointed to any office or situation under this act, or in the public service, the payment of such compensation shall be suspended so long as he continues to receive the salary or emoluments of such office or situation, if the amount thereof be equal to or greater than the amount of emoluments in respect of the loss whereof compensation is awarded; and if the amount of such last-mentioned emoluments be greater than the salary or emoluments of such office or situation, no more of such compensation shall be paid than will, with such salary or emoluments, be equal to the emoluments in respect of the loss whereof such compensation is payable.

CIV. Any person to whom compensation is awarded under this act in respect of the loss of emoluments of any office, and who at the passing of this act shall have been discharging or liable to discharge in respect of such office duties other than those in matters and causes testamentary, shall, so long as he shall receive such compensation, be bound to discharge such

Persons receiving compensation to continue to discharge the remaining duties of their offices.

C. P. A. 1857. other duties on the same terms on which, whether gratuitously or otherwise, he discharged or was liable to discharge the same before the passing of this act.

Compensation to
proctors.

CV. Whereas the fees or emoluments of the persons now practising as proctors in the Courts now exercising jurisdiction in matters and causes testamentary may be damaged by the abolition of the exclusive rights and privileges which they have hitherto enjoyed as such proctors in such courts: be it enacted, that the Commissioners of her Majesty's Treasury, by examination on oath or otherwise, which oath they are hereby authorized to administer, may inquire into, and may, by the production of such evidence as they shall think fit to require, ascertain and absolutely determine the net annual amount of the profits arising from the transaction of business by proctors in matters and causes testamentary, on an average of five years immediately preceding the commencement of this act, or of such proportion of five years as shall have elapsed since each and every such proctor was admitted to practise in such Courts, and shall award to each and every such proctor a sum of money or annual payment during the term of his natural life of such amount as shall be equal in value to one half of the net profits derived by such proctor in respect of matters and causes testamentary upon the said average of five years immediately preceding the commencement of this act, or of such proportion of the said five years as shall have elapsed since the admission of each and every such proctor to practise in the Courts now exercising jurisdiction in matters and causes testamentary.

Compensation to
proctors in part-
nership.

CVI. And whereas divers proctors practising in the Courts now exercising jurisdiction in matters and causes testamentary now are or may at the commencement of this act be associated together in partnership: be it therefore enacted, that in all such cases the Commissioners of her Majesty's Treasury shall inquire into and ascertain the terms or conditions of such partnerships, and shall absolutely determine and award compensation in respect thereof as hereinbefore provided to each of such partnerships, in like manner as if all the emoluments thereof had been derived by one individual, and shall apportion such compensation among the members of each such partnership, with or without benefit of survivorship, regard being had to the existing terms and conditions of the same.

For the protection
of the interests of
Viscount Canter-
bury.

CVII. And whereas the Most Reverend Charles late Archbishop of Canterbury, by virtue of the power given by an act of the ninth year of King George the Fourth, "to authorize the Lord Archbishop of Canterbury for the time being to appoint a person or persons to the office of Registrar of his prerogative, without a previous surrender of the existing grant or grants of the said office," did, by letters patent under his archiepiscopal seal, dated the twenty-first day of June, one

thousand eight hundred and twenty-eight, with the confirmation of the dean and chapter of the cathedral and metropolitical Church of Christ, Canterbury, grant the said office of Registrar of his prerogative to the Right Honourable Charles Manners Sutton, now Viscount Canterbury, then Charles Manners Sutton, esquire, the eldest son and next heir male of the Right Honourable Charles Manners Sutton, late Viscount Canterbury, for his life, subject and without prejudice to the estates and interest, rights and privileges of the Reverend George Moore and Robert Moore (who then held the said office by virtue of such grant as therein mentioned), and the survivor of them: And whereas by an act passed in the session of parliament held in the second and third years of the reign of his late Majesty King William the Fourth, intituled “An Act for settling and securing Annuities on the Right Honourable Charles Manners Sutton and on his next heir male, in consideration of the eminent Services of the said Right Honourable Charles Manners Sutton,” it was enacted, that an annuity of four thousand pounds should be payable out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland to the said Right Honourable Charles Manners Sutton late Viscount Canterbury during his life, and that after the decease of the said Charles late Viscount Canterbury one annuity of three thousand pounds be payable out of the said Consolidated Fund to the then heir male of the body of the said Charles late Viscount Canterbury, during the natural life of such heir male; and it was further enacted, that, in the event of the said Charles now Viscount Canterbury having succeeded to and being in the possession of the said annuity of three thousand pounds, and afterwards becoming entitled to the full possession of the said office of Registrar of the prerogative of the Lord Archbishop of Canterbury, and to the fees, perquisites, profits, and emoluments thereof (provided the same should exceed the annual sum of three thousand pounds), then and in either of the cases aforesaid the said annuity of three thousand pounds should cease and determine and be no longer payable to the said Charles now Viscount Canterbury: provided nevertheless, that if the said fees, perquisites, profits, and emoluments of the said office of Registrar should not produce the net annual sum of three thousand pounds to the said Charles now Viscount Canterbury, then there should be issued and paid out of the said Consolidated Fund such a sum of money annually, as, together with the said fees, perquisites, profits, and emoluments, would make a clear annual income to the said Charles now Viscount Canterbury of three thousand pounds: and whereas the said Charles now Viscount Canterbury, upon the decease of the said Charles late Viscount Canterbury, succeeded to and is now in possession of the annuity of three thousand pounds, but he is not yet in possession of the said

C. P. A. 1857.

2 & 3 Will. 4,
c. 109.

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C. P. A. 1857. office of Registrar: there shall be awarded to the said Charles now Viscount Canterbury, as a compensation for the fees, perquisites, profits, and emoluments of the said office of Registrar of the prerogative of the Lord Archbishop of Canterbury, an annuity to be calculated upon the average yearly net receipts of the legal fees, perquisites, profits, and emoluments of the said office during such period next preceding the time when this act shall come into operation as the Commissioners of her Majesty's Treasury shall think proper; and such annuity shall commence from the time of this act coming into operation, if the said Charles Viscount Canterbury shall then be in possession of the said office, and if not then from the time at which the said Charles Viscount Canterbury would have become entitled, but for the passing of this act, to the full possession of the said office, and to the receipt of the fees, perquisites, profits, and emoluments thereof, and shall be paid to the said Charles Viscount Canterbury thenceforth during his life; provided that if the said annuity by way of compensation shall exceed the annual sum of three thousand pounds, then the said annuity of three thousand pounds payable under the last-recited act to the said Charles Viscount Canterbury shall, from and after the commencement of the said annuity by way of compensation, cease and determine, and shall not be payable to the said Charles Viscount Canterbury; and in case the annuity awarded by way of compensation shall be less than the net annual sum of three thousand pounds, the provision contained in the said recited act passed in the session of parliament held in the second and third years of his late Majesty King William the Fourth, for the payment unto the heir male of the body of the said Charles Viscount Canterbury, out of the said Consolidated Fund, of such a sum of money annually as, together with the said fees, perquisites, profits, and emoluments, would make up a clear income to him of three thousand pounds, shall, from and after the commencement of the said annuity by way of compensation, be applicable to and be in force for the purpose of making up, together with the said annuity so to be awarded in lieu of such fees, perquisites, profits, and emoluments as aforesaid, a clear annual income of three thousand pounds to the said Charles now Viscount Canterbury during his life.

The Registry of
Prerogative Court
of Canterbury to
vest in Registrars
of the Court.

CVIII. All the claim, title, and interest which at the time of the passing of this act the Reverend Robert Moore clerk has or is entitled to in or in respect of the building at present used as the Public Registry of the Prerogative Court, shall at the time appointed for the commencement of this act vest in the Registrars for the time being of the Court, subject to the payment of such rents, and the performance and fulfilment of such contracts in respect thereof, as the said Robert Moore, his executors or administrators, shall be subject to at the time of such vesting.

Compensation to
Sir John Dodson

CIX. In case Sir John Dodson, the present Judge of the

Prerogative Court of Canterbury and Dean of the Court of Arches, be not appointed the first Judge of the Court of Probate, there shall be paid to him during his natural life, as well by way of retiring pension as of salary as Dean of the Court of Arches, the net yearly sum of two thousand pounds, to commence from the time appointed for the coming into operation of this act, and to be paid out of the fund and in manner herein provided for the payment of compensations.

C. P. A. 1857.

in case he be not appointed Judge of the Court of Probate.

CX. There shall be a clerk or so many clerks in each District Registry, and there shall be paid to such clerk or clerks such salary or respective salaries, as the Judge of the Court, with the sanction of the Commissioners of her Majesty's Treasury, may from time to time think fit to direct; and it shall be lawful for such Judge to prescribe from time to time the qualifications which shall be possessed by persons appointed to be clerks in such District Registries, and generally to regulate the establishment of such District Registries with reference to the duties to be performed therein; and the clerk or clerks in each District Registry shall be appointed by the District Registrar, with the approval of the Judge; and every such clerk may be removed by such Judge, or by the District Registrar with the approval of the Judge.

Establishments in District Registries.

CXI. Each District Registrar shall, out of the fees taken by him in respect of the business in his respective District Registry, pay the salary or salaries of the clerk or clerks in such Registry, and the residue of such fees shall be retained by such District Registrar to his own use; and every District Registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the Commissioners of her Majesty's Treasury a faithful account in writing of all such fees received by him during such year: provided that it shall be lawful for the Commissioners of her Majesty's Treasury, at any time after the commencement of this act, to order that the District Registrars under this act, or any of them, shall be paid by salaries instead of fees, and to fix the salaries to be payable to them respectively; and thereupon all fees payable to the District Registrars so ordered to be paid by salaries shall be accounted for and paid into the exchequer at such times and under such regulations as the Commissioners of her Majesty's Treasury shall direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom, and the salaries of such District Registrars and of their clerks shall be paid out of such monies as shall be provided by parliament for that purpose, and no such District Registrar shall be deemed to have any claim to compensation on account of any diminution of his emoluments by reason of any such order.

Fees payable to District Registrars.

District Registrars may be paid by salaries instead of fees.

CXII. It shall be lawful for the Commissioners of the Compensation to

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C. P. A. 1857.
clerical surro-
gates, &c.

Treasury to grant to every clerical surrogate or other clerical person who, at the time of the passing of this act, shall have been appointed surrogate in either of the provinces of Canterbury or York, such compensation for any loss the said surrogates or persons may sustain by the passing of this act as the said commissioners deem just and proper to be awarded; the said commissioners having regard in awarding such compensation to the circumstance of the said clerical surrogates not being able to follow any other professional employment in lieu of the said office of surrogate.

Persons receiving
compensation to
be liable to be
called upon to fill
offices, &c.

CXIII. That every person to whom any compensation shall be granted under this act shall at all times when called upon be liable to fill any public office or situation in England under the crown for which his previous services in any office abolished by this act may render him eligible; and that if he shall decline when called upon so to do to take upon himself such office or situation, and execute the duties thereof satisfactorily, being in a competent state of health, he shall forfeit his right to any compensation or allowances which may have been granted to him in respect of such previous services.

Publication of
accounts.

CXIV. The Commissioners of her Majesty's Treasury shall cause to be prepared in each year ending December thirty-one a return of all fees and monies levied in such year under the authority of this act; also a return of the annual salaries of the Judge of the said Court of Probate, and of the Registrars, Deputy Registrars, clerks, and all others holding offices either in London or in the country districts, with an account of all the incidental expenses relating to the offices aforesaid, whether such salaries and expenses be defrayed out of fees or out of any other monies; also a return of all superannuations, pensions, annuities, retiring allowances and compensations made payable under this act in each year, stating the gross amount and the amount in detail of such charges: provided always, that all such returns aforesaid shall be presented to both Houses of Parliament on or before the 31st day of March in each year, if parliament is then sitting, and if parliament is not sitting, then such returns shall be presented within one month of the first meeting of parliament after the thirty-first day of March in each year: provided also, that every District Registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the Commissioners of her Majesty's Treasury a faithful account in writing of all such fees received by him during such year.

Judge if a privy
councillor to be a
member of judi-
cial committee.

CXV. The Judge of the Court if a Privy Councillor shall be a member of the Judicial Committee of the Privy Council.

College of doctors
of law may let,
sell, &c. their real

CXVI. And whereas, with reference to the abolition of the jurisdiction hereby abolished and otherwise, it is expedient to give, confirm, or extend certain powers to or of "The College

of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts," incorporated under that style and title by letters-patent, dated the twenty-second day of June, in the eighth year of his late Majesty King George the Third: be it enacted, that it shall be lawful for the said college from time to time hereafter to let, sell, or exchange for other real or personal estate, or both, all or any part of the real and personal estate which shall for the time being belong to the said college, either directly or through the medium of any trustee or trustees, and to lay out the monies to be received on any such sale or exchange or otherwise, belonging to the said college as aforesaid, in the purchase of other real or personal estate, or both, but so that the said college shall not at any one time hold or enjoy real estate of a yearly value exceeding one thousand pounds in the whole, and to pay, apply and dispose of the income of all the real and personal estate which shall for the time being belong to the said college as aforesaid to or for the benefit of such body or bodies politic or corporate, or person or persons, whether being or including or not being or including, the said college, and all or any individual members or member thereof for the time being, and generally for such purposes and in such manner as the said college shall think fit; and further, to alien and dispose of all or any part of such real and personal estate and the proceeds of any sale thereof, either by way of donation, voluntary disposition or otherwise, unto, between, or amongst any body or bodies politic or corporate, or any person or persons whatsoever, whether being or not being a member or members of the said college: provided always, that no donation or other voluntary disposition of the corpus, or any part of the corpus, of the real and personal estate of the said college, to any person or persons being a member or members thereof at the time of such donation or other voluntary disposition, shall be effectual without the previous consent thereto of a majority of the members of the said college present at any meeting of the college, and the receipt of the treasurer for the time being of the said college shall be an effectual discharge for all gross annual and other sums which shall for the time being belong or be payable to the said college.

C. P. A. 1857.

and personal estate, and lay out monies in purchase of other estates, &c.

CXVII. It shall be lawful for the said college, at any time after a resolution to that effect shall have been come to at a meeting of the college, by a majority of the members present at such meeting, to surrender and yield up to her Majesty, her heirs or successors, at such time as in such resolution shall be determined, the charter of incorporation of the said college, and all franchises and privileges thereby conferred, or which shall for the time being belong to the said college; and upon and by such surrender the said corporation shall be dissolved, and shall cease to exist, for all purposes whatsoever (except so far as its

College may surrender their charter, and upon such surrender shall be dissolved.

C. P. A. 1857. existence may be requisite for the saving of the rights of her Majesty, her heirs and successors, and of all and every person and persons, body and bodies politic or corporate whatsoever, other than the said college), and all real and personal estate which at the time of such dissolution of the said college shall belong to the said college for its own use and benefit, either directly or through the medium of any trustee or trustees, shall thenceforth belong, for all the estate and interest therein which at the time of such dissolution belonged to the said college absolutely, to all the persons who at the time of such dissolution thereof shall be the president and fellows of the said college, in equal shares as tenants in common, to and for their own use and benefit respectively, but subject to any charges or incumbrances affecting the same at the time of such dissolution, and all real and personal estate of which the said college at the time of such dissolution thereof be seised or possessed, upon any trust or trusts, shall thereupon become vested in the four persons who at the time of such dissolution shall be the president and three senior fellows of the said college, as joint tenants, their heirs, executors, or administrators, according to the nature of the real and personal estates respectively, upon the trust or trusts affecting the same respectively.

Treasury to provide the buildings for Registries, &c.

CXVIII. It shall be lawful for the Commissioners of her Majesty's Treasury, out of such monies as may be provided and appropriated by parliament for that purpose, to cause to be purchased, erected, hired, or otherwise provided such offices and buildings as may be suitable for the District Registries and depository or depositories for wills, and such buildings, if any, as may be necessary for the Court and Principal Registry, in addition to the building by this act vested in the said Registrars, or after the determination of their interest in such building.

Rules and Orders to be laid before Parliament.

CXIX. All rules and orders to be made under this act concerning procedure and practice, and the table of fees to be fixed under this act, and all alterations thereof, to be from time to time made, shall be laid before both houses of parliament within one month after the making thereof if parliament be then sitting, or if parliament be not then sitting, within one month after the commencement of the then next session of parliament.

[SCHEDULE.

SCHEDULE (A).

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Districts and Places of District Registries throughout England and Wales.

Districts.	Places of District Registries.
County of Northumberland (a)	Newcastle-on-Tyne.
County of Durham	Durham.
Counties of Cumberland and Westmoreland	Carlisle.
West Riding of the County of York	Wakefield.
North Riding ditto	York.
East Riding ditto (b), including the city of York and Ainsty	
County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester.	Lancaster.
City of Manchester and Hundred of Salford	Manchester.
Hundred of West Derby in Lancashire	Liverpool.
County of Chester (c)	Chester.
Counties of Carnarvon and Anglesea	Bangor.
Counties of Flint, Denbigh and Merioneth	St. Asaph.
County of Derby	Derby.
County of Nottingham (d)	Nottingham.
Counties of Leicester and Rutland	Leicester.
County of Lincoln (e)	Lincoln.
Counties of Salop and Montgomery	Shrewsbury.
Northern Division of Northampton, and counties of Huntingdon and Cambridge (f).	Peterborough.
County of Norfolk (g)	Norwich.
Eastern division of the county of Suffolk and north division of the county of Essex.	Ipswich.
Western division of the county of Suffolk	Bury St. Edmunds.
County of Bedford and southern division of Northamptonshire (h).	Northampton.
County of Warwick (i)	Birmingham.
County of Stafford (k)	Lichfield.
Counties of Radnor, Brecknock and Hereford	Hereford.
Counties of Cardigan, Carmarthen (l), and Pembroke (m), with the deaneries of East and West Gower in the county of Glamorgan.	Carmarthen.

(a) Including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.

(b) Including the town and county of Kingston-on-Hull.

(c) Including the city of Chester.

(d) Including the town of Nottingham.

(e) Including the city of Lincoln.

(f) Including the University of Cambridge.

(g) Including the city of Norwich.

(h) Including the town of Northampton.

(i) Including the city of Coventry.

(k) Including the city of Lichfield.

(l) Including the town of Carmarthen.

(m) Including the town of Haverfordwest.

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Districts.	Places of District Registries.
Counties of Glamorgan (with the exception of the Deaneries of East and West Gower) and Monmouth.	Llandaff.
County of Worcester (<i>n</i>)	Worcester.
County of Gloucester (<i>o</i>), except the present Bristol County Court District.	Gloucester.
Bristol and Bath present County Court districts ..	Bristol.
Counties of Oxford (<i>p</i>), Berks, Bucks	Oxford.
Eastern division of the county of Somerset, except the present Bath County Court district, and the part in Somersetshire of the present Bristol County Court district.	Wells.
Western division of the county of Somerset	Taunton.
County of Devon (<i>q</i>)	Exeter.
County of Cornwall	Bodmin.
County of Wilts	Salisbury.
County of Dorset (<i>r</i>)	Blandford.
County of Hants (<i>s</i>)	Winchester.
Eastern division of the county of Sussex (<i>t</i>)	Lewes.
Western division of the county of Sussex	Chichester.
East division of the county of Kent (<i>u</i>)	Canterbury.

The divisions of counties referred to in the schedule are the divisions of the same counties described for election purposes in the act of the second and third years of King William the Fourth, chapter sixty-four; and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.

- (*n*) Including the city of Worcester.
 (*o*) Including the city of Gloucester.
 (*p*) Including the University of Oxford.
 (*q*) Including the city of Exeter.
 (*r*) Including the town of Poole.
 (*s*) Including the town of Southampton and Isle of Wight.
 (*t*) Including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.
 (*u*) Including the city of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.

SCHEDULE (B).

	Annual Salary.
The Three Registrars in London, each	£1,500
The Record Keepers, each	600
The Sealer	300

21 & 22 VICT. c. 95 (C. P. A. 1858).

An Act to amend the Act of the Twentieth and Twenty-first Victoria, Chapter Seventy-Seven. C. P. A. 1858.

[2nd August, 1858.]

WHEREAS in the last session of parliament an act was passed, intituled "An Act to amend the Law relating to Probates and Letters of Administration, in England," hereinafter designated "The Court of Probate Act:" and whereas it is expedient to amend the same: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

20 & 21 Vict.
c. 77.

I. It shall be lawful for the Judge of the High Court of Admiralty to sit in open Court or in chambers for the Judge of her Majesty's Court of Probate, and it shall be lawful for the Judge of her Majesty's Court of Probate to sit in open Court or in chambers for the Judge of the High Court of Admiralty; and all orders, decrees, or sentences, and other acts whatsoever, made, decreed, pronounced, or done by either of the Judges aforesaid acting for the other, shall, in the Court books, be stated to have been made, decreed, pronounced, or done by such Judge sitting and acting on behalf of such other Judge; and such orders, decrees, sentences, and other acts so made, decreed, pronounced, or done shall have the same force and validity in law as if they had been made, decreed, pronounced, or done by the Judge on whose behalf they purport to have been so made, decreed, pronounced, or done.

The Judge of the High Court of Admiralty and the Judge of the Court of Probate may sit for each other.

II. All serjeants and barristers at law shall be entitled from and after the passing of this act to practice in all causes and matters whatsoever in the Court of Probate.

Serjeants and barristers may practice in Court of Probate.

III. It shall be lawful for the Judge of the Court of Probate for the time being to sit in chambers for the dispatch of such part of the business of the said Court as can in the opinion of the said Judge, with advantage to the suitors, be heard in chambers; and the times at which such sittings shall be held shall from time to time be fixed by the Judge: provided always, that no question shall be heard in chambers which either party shall require to be heard in open Court.

The Judge of the Court of Probate may sit in chambers.

IV. The Commissioners of her Majesty's Treasury shall from time to time provide chambers in which the Judge of the Court of Probate shall sit for the dispatch of such business as aforesaid; and until such chambers are provided elsewhere the said Judge shall sit in chambers in any room which he may find convenient for the purpose.

The Treasury to cause chambers to be provided.

V. The Judge of the Court of Probate, when so sitting in Powers of Judge

C. P. A. 1858.
when sitting in
chambers.

Power to appoint
an additional Re-
gistrar.

Vacancy in office
of Registrar how
to be filled up.

Clerks in the Prin-
cipal Registry
eligible to be Re-
gistrars, &c.

Certain articled
clerks to be ad-
mitted proctors of
the Court of Pro-
bate.

Where personalty
is under 200*l.*,
County Court to
have jurisdiction.

chambers, shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open Court.

VI. Whereas there are now three Registrars only of the Principal Registry of the said Court, that is to say, Augustus Frederic Bayford, the senior Registrar; Charles John Middleton, the second Registrar; and Edward Francis Jenner, the third Registrar: and whereas the duties of the said Principal Registry cannot be efficiently discharged by three Registrars: be it enacted, that it shall be lawful for the Judge of the said Court to appoint a fourth Registrar for the Principal Registry of the said Court, in addition to the three Registrars appointed under the Court of Probate Act; and from and after the appointment of such fourth Registrar there shall be paid to each of the said Registrars the annual salary mentioned in the schedule to this act, in lieu of the salary provided by the Court of Probate Act, such salaries to be paid out of any monies provided by parliament for the purposes of the said act: provided always, that nothing herein contained shall be construed to diminish the salary of any of the three Registrars appointed before the passing of this act.

VII. On the death, resignation, or removal of any of the four Registrars of the said Principal Registry, other than the junior Registrar for the time being, the vacancy thereby occasioned shall be filled up by the Registrar next in seniority to whom no sufficient objection shall be made to the satisfaction of the Judge of the said Court.

VIII. Clerks having served five years in the Principal Registry of the Court of Probate shall be eligible to be appointed Registrars or District Registrars of the said Court.

IX. It shall be lawful for the Judge of the Court of Probate to admit any person who at the time of the passing of the Court of Probate Act was articled to a proctor in Doctors' Commons, or to a proctor belonging to any Ecclesiastical Court, so soon as he shall have served the full term for which he was articled, or within the period of one year therefrom, to be a proctor of her Majesty's Court of Probate upon the payment of such fees as shall be fixed by the Judge of the said Court with the sanction of the Commissioners of her Majesty's Treasury.

X. Where it appears by affidavit to the satisfaction of a Registrar of the Principal Registry that the testator or intestate in respect of whose estate a grant or revocation of a grant of probate or letters of administration is applied for had at the time of his death his fixed place of abode in one of the districts specified in Schedule (A.) to the said "Court of Probate Act," and that the personal estate in respect of which such probate or letters of administration are to be or have been granted, exclusive of what the deceased may have been possessed of or entitled

to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, was at the time of his death under the value of two hundred pounds, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate of the value of three hundred pounds or upwards, the Judge of the County Court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.

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XI. Section fifty-four of the said Court of Probate Act shall be and the same is hereby repealed.

Sect. 54 of 20 & 21 Vict. c. 77, repealed.

XII. The said Court of Probate Act, section fifty-nine, shall, so far as the County Courts or a Judge thereof are concerned, apply to an application for the revocation of a grant of probate or administration as well as to an application for any such grant.

Sect. 59 of 20 & 21 Vict. c. 77, to apply to applications for revocation of grants.

XIII. The power and authority to make rules and orders for regulating the proceedings of the County Courts shall extend and be applicable to all proceedings in the County Courts under this act, and also to framing a scale of costs and charges to be paid to counsel, proctors, solicitors, and attorneys, in respect of proceedings in County Courts, under the said Court of Probate Act or this act.

Power to make Rules and Orders and frame scales of fees for the County Courts.

XIV. All non-contentious business pending in any Ecclesiastical Court at the time when "The Court of Probate Act" came into operation shall be deemed to have been transferred to the Court of Probate, in the same way as all pending suits were transferred to the said Court under the said act, and all acts executed under the authority of any such Ecclesiastical Court with reference to such business which would have been valid if the authority of such Court had not been abolished shall be valid, and all oaths and bonds sworn and executed in manner required by any such Ecclesiastical Court in reference to such business, prior to the eleventh day of January, one thousand eight hundred and fifty-eight, shall continue to have and be deemed to have had the same force and effect in law as they would have had if sworn and executed in pursuance of the provisions of the said act or of this act.

Non-contentious business pending in any Ecclesiastical Court to be transferred.

XV. Bonds given to any archbishop, bishop, or any other person exercising testamentary jurisdiction in respect of grants of letters of administration made prior to the eleventh day of January, one thousand eight hundred and fifty-eight, or in respect of grants made in pursuance of the Court of Probate Act or of this act, whether taken under a commission or requisition

Bonds given before Jan. 11, 1858, to remain in force.

C. P. A. 1858. executed before or after the said eleventh day of January, shall enure to the benefit of the Judge of the Court of Probate, and, if necessary, shall be put in force in the same manner and subject to the same rules (so far as the same may be applicable to them) as if they had been given to the Judge of the said Court subsequently to that day.

An executor not acting or not appearing to a citation to be treated as if he had renounced.

XVI. Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.

Judge of the Court of Probate may amend grants made before Jan. 11, 1858.

XVII. The Judge of the Court of Probate shall have and exercise the same power of altering and amending grants of probate and letters of administration made before the eleventh day of January, one thousand eight hundred and fifty-eight, as any Ecclesiastical Court had and exercised in respect of such grants.

Provisions of 38 Geo. 3, c. 87, and 20 & 21 Vict. c. 77, extended to all cases of executors and administrators.

XVIII. The provisions of an act passed in the thirty-eighth year of George the Third, chapter eighty-seven, and of "The Court of Probate Act," shall be extended to all executors and administrators residing out of the jurisdiction of her Majesty's Courts of Law and Equity, whether it be or be not intended to institute proceedings in the Court of Chancery, and to all grants made before and subsequently to the passing of the last-mentioned act, and it shall be lawful to alter the language of the grant prescribed by the first-named statute so as to make it apply to grants made in the Court of Probate under the said last-mentioned act.

Between the death of the person deceased and the grant the property to vest in the Judge Ordinary.

XIX. From and after the decease of any person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the Judge of the Court of Probate for the time being, in the same manner and to the same extent as heretofore they vested in the ordinary.

Second and subsequent grants to be made where the original will or the original letters of administration are deposited.

XX. All second and subsequent grants of probate or letters of administration shall be made in the Principal Registry, or in the District Registry where the original will is registered, or the original grant of letters of administration has been made, or in the District Registry to which the original will, or a registered copy thereof, or the record of the original grant of administration, have been transmitted, by virtue of a requisition issued in pursuance of section eighty-nine of "The Court of Probate Act;" and for and in respect of such second or subsequent grants of probate, or letters of administration, to be made in a District Registry, it shall not be requisite that it should appear by affidavit that the testator or intestate had a fixed place of abode within the district in which the application is made.

XXI. It shall be lawful for the Court of Probate to require security by bond, in such form as by any rules and orders shall from time to time be directed, with or without sureties, from any receiver of the real estate of any deceased person appointed by the said Court, under section seventy-one of "The Court of Probate Act;" and the Court may, on application made on motion, or in a summary way, order one of the Registrars of the Court to assign the same to some person to be named in such order; and such person, his executors or administrators, shall thereupon be entitled to sue on the said security, or put the same in force in his or their own name or names, both at law and in equity, as if the same had been originally given to him instead of to the Judge of the said Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount due in virtue thereof.

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The Court of Probate may require security from a receiver of real estate.

XXII. All the provisions contained in the Court of Probate Act, respecting grants of administration pending suit, shall be deemed to apply to the case of appeals to the House of Lords under the said act.

Administration pending suit deemed to apply to appeals.

XXIII. It shall be lawful for a Registrar of the Principal Registry of the Court of Probate, and whether any suit or other proceeding shall or shall not be pending in the said Court, to issue a subpoena requiring any person to produce and bring into the Principal or any District Registry, or otherwise, as in the said subpoena may be directed, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession, within the power, or under the control of such person; and such person, upon being duly served with the said subpoena, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default as if he had been a party to a suit in the said Court, and had been ordered by the Judge of the Court of Probate to produce and bring in such paper or writing.

Registrar may issue subpoena to produce papers, &c.

XXIV. The Registrars of the Principal Registry shall be invested with and shall and may exercise with reference to proceedings in the Court of Probate the same power and authority which surrogates of the Judge of the Prerogative Court of Canterbury could or might before the passing of the Court of Probate Act have exercised in chambers with reference to proceedings in the said Prerogative Court.

The Registrars to do all acts heretofore done by surrogates.

XXV. Copies of wills required to be transmitted by a District Registrar, and certified by him to be correct copies, under section fifty-one of the Court of Probate Act, may be so certified and transmitted under a stamp provided by the District Registrar for that purpose, and approved of by the Judge of the Court of Probate.

Copies of wills may be certified by a stamp.

XXVI. Certificates issued from the Principal Registry with reference to notices of applications transmitted from the District

Certificates from the Principal Registry may be stamped.

C. P. A. 1858. Registrars under section forty-nine of the Court of Probate Act need not be made under the hand of a Registrar of the Principal Registry, as required by the said act, but may be issued under a stamp provided for that purpose, and approved of by the Judge of the Court of Probate.

Requisitions may be issued for the transmission of a single paper.

XXVII. Whereas doubts have been entertained whether a requisition can be issued under section eighty-nine of the Court of Probate Act for the transmission of one or more papers only, not being all the papers and documents in the custody of the person to whom any such requisition may be addressed: be it therefore enacted and declared, that the said section shall be construed to extend to all requisitions, whether for the transmission of one or of more records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, or other instruments relating exclusively or principally to matters and causes testamentary.

Power to enforce decree as to costs.

XXVIII. The Judge of the Court of Probate, and the registrars of the Principal Registry thereof, shall respectively, in any case where an Ecclesiastical or other Court having testamentary jurisdiction had previously to the eleventh day of January, one thousand eight hundred and fifty-eight, made any order or decree in respect of costs, have the same power of taxing such costs, and enforcing payment thereof, or of otherwise carrying such order or decree into effect, as if the cause wherein such decree was made had been originally commenced and prosecuted in the said Court of Probate: provided, that in taxing any such costs, or any other costs incurred in causes depending in any such Courts before the time aforesaid, all fees, charges and expenses shall be allowed which might have been legally made, charged, and enforced according to the practice of the Prerogative Court of Canterbury.

Letters of administration granted in Ireland not to be resealed in England, until sufficient bond is given.

XXIX. Letters of administration granted by the Court of Probate in Ireland shall not be resealed, under section ninety-five of the twentieth and twenty-first Victoria, chapter seventy-nine, until a certificate has been filed under the hand of a Registrar of the Court of Probate in Ireland that bond has been given to the Judge of the Court of Probate in Ireland in a sum sufficient in amount to cover the property in England as well as in Ireland in respect of which such administration is required to be resealed.

Commissioners may be appointed in the Isle of Man, &c.

XXX. It shall be lawful for the Judge of the Court of Probate to appoint, by commission under seal of the Court, any persons practising as solicitors in the Isle of Man, in the Channel Islands, or any of them, to administer oaths, and to take declarations or affirmations, and to exercise any other powers which can be exercised by Commissioners of her Majesty's Court of Probate; and such persons shall be entitled from time to time

to charge and take such fees as any other persons performing the same duties in the Court of Probate may charge and take. C. P. A. 1858.

XXXI. In cases where it is necessary to obtain affidavits, declarations or affirmations to be used in the Court of Probate from persons residing in foreign parts out of her Majesty's dominions, the same may be sworn, declared or affirmed before the persons empowered to administer oaths under the act of the sixth of George the Fourth, chapter eighty-seven, or under the act of the eighteenth and nineteenth of Victoria, chapter forty-two ; provided that in places where there are no such persons as are mentioned in the said acts such affidavits, declarations, or affirmations may be made, declared and affirmed before any foreign local magistrate or other person having authority to administer an oath.

Affidavits, before whom to be sworn when parties making them reside in foreign parts.

XXXII. Affidavits, declarations, and affirmations to be used in the Court of Probate may be sworn and taken in Scotland, Ireland, the Isle of Man, the Channel Islands, or any colony, island, plantation, or place out of England under the dominion of her Majesty, before any Court, Judge, notary public, or person lawfully authorized to administer oaths in such country, colony, island, plantation or place respectively, or, so far as relates to the Isle of Man and the Channel Islands, before any commissary, ecclesiastical judge, or surrogate, who, at the time of the passing of the Court of Probate Act, was authorized to administer oaths in the Isle of Man or in the Channel Islands respectively, and all Registrars and other officers of the Court of Probate shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public or person, which shall be attached, suspended or subscribed to any such affidavit, declaration, or affirmation, or to any other document.

Affidavits, before whom to be sworn.

XXXIII. If any person shall forge any such seal or signature as last aforesaid, or any seal or signature impressed, affixed, or subscribed, under the provisions of the said act of the sixth of George the Fourth, or of the said act of the eighteenth and nineteenth Victoria, to any affidavit, declaration, or affirmation to be used in the Court of Probate, or shall tender in evidence any such document as aforesaid with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years nor less than one year ; and whenever any such document has been admitted in evidence by virtue of this act, the Court or the person who has admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded,

Persons forging seal or signature guilty of felony.

C. P. A. 1852. and be kept in the custody of some officer of the Court or other proper person, for such period and subject to such conditions as to the said Court or person shall seem meet; and every person charged with committing any felony under this act may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in the county, district, or place in which he may be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence laid and charged to have been committed, in any county, district, or place in which the principal offender may be tried.

Persons taking a false oath before a surrogate guilty of perjury.

XXXIV. Any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely, in any affidavit or deposition before any surrogate having authority to administer oaths under the Court of Probate Act, or before any person who before the passing of the said act was a surrogate authorized to administer oaths in any of the Channel Islands, or before any person authorized to administer oaths under this act, shall be liable to the penalties and consequences of wilful and corrupt perjury.

Provision for the necessary absence of officers.

XXXV. In case any officer appointed or to be appointed by virtue of the Court of Probate Act, 1857, or of this act, shall, by reason of ill-health or other infirmity, become temporarily incapable of performing the duties of his office, it shall be lawful for the Judge to appoint some other fit and proper person to discharge the duties of such office for any period not exceeding six calendar months at any one time, and the person so appointed shall, during such period, have all the power and authority of the officer in whose place he shall be so appointed, and shall be paid by such officer such sum by way of salary or allowance as shall be agreed upon between them respectively or be fixed by the Judge, and the Judge may, at his discretion, give leave of absence to any officer of the Court for any period not exceeding two months in any year, and shall have the like power of making provision for the discharge of the duties of the office during such absence.

The Judge to have the same powers over practitioners as Judges of other Courts.

XXXVI. The Judge of the Court of Probate shall have and exercise, over proctors, solicitors, and attornies practising in the said Court, the like authority and control as is now exercised by the Judges of any Court of Equity or Common Law over persons practising therein as solicitors or attornies.

Provision for expenses of indexing, &c. documents required to be removed under requisition.

XXXVII. When any requisition shall issue in pursuance of section eighty-nine of "The Court of Probate Act, 1857," it shall be lawful for the Commissioners of her Majesty's Treasury, out of such monies as may be provided and appropriated by parliament for that purpose, to cause to be paid all such expenses attending the arranging, classification, indexing, car-

riage, or otherwise connected with the removal of the documents or books required by such requisition to be removed, as the Judge shall from time to time certify to the said commissioners to be proper and necessary. C. P. A. 1858.

XXXVIII. In citing the act of the twentieth and twenty-first Victoria, chapter seventy-seven, in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Court of Probate Act, 1857," and in citing this act, the expression "Court of Probate Act, 1858." Short title of act.

SCHEDULE.

Senior Registrar	..	..	..	£1,600
Second "	..	..	..	1,400
Third "	..	..	..	1,200
Fourth "	..	..	..	1,000

21 & 22 VICT. c. 56.

An Act to amend the Law relating to the Confirmation of Executors in Scotland, and to extend over all Parts of the United Kingdom the Effect of such Confirmation, and of Grants of Probate and Administration. 21 & 22 Vict.
c. 56.

[23rd July, 1858.]

WHEREAS it is expedient to amend the law relating to the confirmation of executors in Scotland, and to extend over the United Kingdom the effect of such confirmation, and of grants of probate and administration: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

I. From and after the twelfth day of November, one thousand eight hundred and fifty-eight, the practice of raising edicts of executry before the Commissary Courts in Scotland, for the decerniture of executors to deceased persons, shall cease, and it shall not be competent to any person to obtain himself decerned executor in virtue of any such edict raised subsequently to the date aforesaid.

Practice of raising edicts of executry to cease.

II. From and after the date aforesaid every person desirous of being decerned executor of a deceased person as disponee, next of kin, creditor, or in any other character whatsoever now competent, or of having some other person, possessed of such

Petition to commissary to be substituted.

B.

E E

21 & 22 Vict.
c. 56.

Form of Petition
as in Schedule (A.)

To whom petition
to be presented.

Mode of intima-
ting petition.

Certificate of inti-
mation of petition.

Additional inti-
mation of petition
in certain cases.

Procedure on peti-
tion.

character, decerned executor to a deceased person, shall, instead of applying, as heretofore, for an edict of executry from the commissary, present a petition to the commissary for the appointment of an executor, which petition shall be in the form as nearly as may be of the Schedule (A.) hereunto annexed, and shall be subscribed by the petitioner or by his agent.

III. Such petition shall be presented to the commissary of the county wherein the deceased died domiciled, and in the case of persons dying domiciled furth of Scotland, or without any fixed or known domicile, having personal or moveable property in Scotland, to the commissary of Edinburgh.

IV. Every such petition, in place of being published at the kirk door and market cross, as edicts of executry have been in use to be published, shall be intimated by the commissary clerk affixing on the door of the Commissary Court house, or in some conspicuous place of the Court and of the office of the commissary clerk, in such manner as the commissary may direct, a full copy of the petition, and by the keeper of the record of edictal citations at Edinburgh inserting in a book, to be kept by him for that purpose, the names and designations of the petitioner and of the deceased person, the place and date of his death, and the character in which the petitioner seeks to be decerned executor, which particulars the keeper of the record of edictal citations shall cause to be printed and published weekly, along with the abstracts of the petitions for general and special services, in the form of Schedule (B.) hereunto annexed: provided always, that to enable the keeper of the record of edictal citations to make such publication, the commissary clerk shall transmit to him the said particulars, and to enable the commissary clerk to grant the certificate after mentioned, the keeper of the record of edictal citations shall transmit to the commissary clerk a copy, certified by the said keeper, of the printed and published particulars, all in such form and manner and on payment of such fees as the Court of Session by act of sederunt may direct.

V. The commissary clerk, after receiving the certified copy of the printed and published particulars, shall forthwith certify on the petition that the same has been intimated and published, in terms of the provisions of this act, in the form of Schedule (C.) hereunto annexed, and such certificate shall be sufficient evidence of the facts therein set forth: provided always, that where a second petition for confirmation is presented in reference to the same personal estate, the commissary shall direct intimation of such petition to be made to the party who presented the first petition.

VI. On the expiration of nine days after the commissary clerk shall have certified the intimation and publication of a petition for the appointment of an executor as aforesaid, the

same may be called in Court, and an executor decerned, or other procedure may take place, according to the forms now in use in case of edicts of executry, and with the like force and effect; and decree dative may be extracted on the expiration of three lawful days after it has been pronounced, but not sooner: provided always, that nothing herein contained shall alter or affect the law as to executors finding caution; and that bonds of caution for executors may be partly printed and partly written.

VII. Provided always, that nothing hereinbefore contained shall alter or affect the course of procedure now in use before the commissaries in confirmations of executors nominate.

VIII. Inventories of personal estates of deceased persons and relative testamentary writings may be given up and recorded in, and confirmations may be granted and issued by, any Commissary Court to which it is competent to apply in virtue of the provisions of this act for the appointment of an executor dative to the deceased.

IX. From and after the date aforesaid it shall be competent to include in the inventory of the personal estate and effects of any person who shall have died domiciled in Scotland any personal estate or effects of the deceased situated in England or in Ireland, or both: provided that the person applying for confirmation shall satisfy the commissary, and that the commissary shall by his interlocutor find that the deceased died domiciled in Scotland, which interlocutor shall be conclusive evidence of the fact of domicile: provided also, that the value of such personal estate and effects situated in England or Ireland respectively shall be separately stated in such inventory, and such inventory shall be impressed with a stamp corresponding to the entire value of the estate and effects included therein, wheresoever situated within the United Kingdom.

X. Confirmations shall be in the form, or as nearly as may be in the form, of Schedules (D.) and (E.) hereunto annexed; and such confirmations shall have the same force and effect with the like writs framed in terms of the acts of sederunt passed on the twentieth December, one thousand eight hundred and twenty-three, and the twenty-fifth February, one thousand eight hundred and twenty-four, or at present in use.

XI. Oaths and affirmations on inventories of personal estates given up to be recorded in any Commissary Court may be taken either before the commissary or his depute, or the commissary clerk or his depute, or before any commissioner appointed by the commissary, or before any magistrate or justice of the peace within the United Kingdom or the colonies, or any British consul.

XII. From and after the date aforesaid, when any confirmation of the executor of a person who shall in manner aforesaid be found to have died domiciled in Scotland, which includes,

21 & 22 Vict.
c. 56.

Decree dative.

Proviso as to
caution.

Not to affect pre-
sent procedure.

Where inven-
tories, &c. may
be recorded.
Confirmations
may be granted.

Inventory may in-
clude personal es-
tate in any part of
United Kingdom.

Form and effect of
confirmations.

Oaths, before
whom to be taken.

Confirmation pro-
duced in Probate
Court of England
and sealed, to

21 & 22 Vict.
c. 56.

have the effect of
probate or admin-
istration.

Confirmation pro-
duced in Probate
Court of Dublin,
and sealed, to
have the effect of
probate or admin-
istration.

Probate or letters
of administration
produced in Com-
missary Court and
certified, to have
effect of confirma-
tion.

For securing the
stamp duties, pro-
bates, &c. to be
deemed granted
for all the prop-
erty in the
United Kingdom.

besides the personal estate situated in Scotland, also personal estate situated in England, shall be produced in the principal Court of Probate in England, and a copy thereof deposited with the Registrar, together with a certified copy of the interlocutor of the commissary finding that such deceased person died domiciled in Scotland, such confirmation shall be sealed with the seal of the said Court, and returned to the person producing the same, and shall thereafter have the like force and effect in England as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate.

XIII. From and after the date aforesaid, where any confirmation of the executor of a person who shall so be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in Ireland, shall be produced in the Court of Probate in Dublin, and a copy thereof deposited with the Registrar, together with a certified copy of the interlocutor of the commissary finding that such deceased person died domiciled in Scotland, such confirmation shall be sealed with the seal of the said Court, and returned to the person producing the same, and shall thereafter have the like force and effect in Ireland as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate in Dublin.

XIV. From and after the date aforesaid, when any probate or letters of administration to be granted by the Court of Probate in England to the executor or administrator of a person who shall be therein, or by any note or memorandum written thereon signed by the proper officer, stated to have died domiciled in England, or by the Court of Probate in Ireland to the executor or administrator of a person who shall in like manner be stated to have died domiciled in Ireland, shall be produced in the Commissary Court of the county of Edinburgh, and a copy thereof deposited with the commissary clerk of the said Court; the commissary clerk shall endorse or write on the back or face of such grant a certificate in the form as near as may be of the Schedule (F.) hereunto annexed; and such probate or letters of administration, being duly stamped, shall be of the like force and effect and have the same operation in Scotland as if a confirmation had been granted by the said Court.

XV. In any of the aforesaid cases where the deceased person shall be stated in or upon the probate or letters of administration to have been domiciled in England or in Ireland, as the case may be, such probate or letters of administration shall, for the purpose of securing the payment of the full and proper stamp duties, be deemed and considered to be granted for and in respect of the whole of the personal and moveable estate and effects of the deceased in the United Kingdom, within the

meaning of the act of parliament passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, and of all other Acts of Parliament granting or relating to stamp duties on probates and letters of administration in England and Ireland respectively; and the affidavit required by law to be made on applying for probate or letters of administration in England or Ireland as to the value of the estate and effects of the deceased; and also where the commissary shall in manner aforesaid find that the deceased was domiciled in Scotland, the inventory required by law to be exhibited and recorded in the proper Commissary Court in Scotland before obtaining confirmation, or intermitting with or entering upon the possession or management of the personal or moveable estate or effects of the deceased in Scotland, shall respectively extend to and include the whole of the personal and moveable estate of the deceased person in the United Kingdom, and the value thereof; and the stamp duties for the time being chargeable on probates and letters of administration and on inventories respectively shall be chargeable upon any probate or letters of administration to be granted, and any inventory to be exhibited and recorded as aforesaid respectively, for and in respect of the whole of the personal and moveable estate and effects of the deceased in the United Kingdom and the value thereof; and the said affidavit shall also separately specify the value of the said estate and effects in Scotland.

XVI. For the purpose aforesaid, and also for granting relief where too high a stamp duty shall have been paid on any such probate or letters of administration, or inventory, the provisions contained in sections forty, forty-one, forty-two, and forty-three, of the said act passed in the fifty-fifth year of his Majesty King George the Third, relating to probates and letters of administration granted in England, and the like provisions in the act passed in the fifty-sixth year of the said king, chapter fifty-six, relating to probates and letters of administration granted in Ireland, and the provisions contained in the act passed in the forty-eighth year of the said king, chapter one hundred and forty-nine, relating to inventories in Scotland, and also all other provisions contained in the said acts respectively, or in any other act or acts relating to probates and letters of administration and inventories respectively, shall apply to the probates and letters of administration to which effect is given by this act, and to the whole of the personal and moveable estate of the deceased for or in respect of which the same shall, in pursuance of this act, be deemed to be granted, wheresoever situate in the United Kingdom; and also to the inventories in which the whole of the personal and moveable estate of the deceased, wheresoever situate in the United Kingdom, ought, in pursuance of this act, to be included, in as full and ample a manner as if all such pro-

21 & 22 Vict.
c. 56.

Inventory to include all such property.

Provisions of former acts to apply to the probates, letters of administration, and inventories mentioned in this act.

21 & 22 Vict.
c. 56.

Affidavit as to
domicile to be
made on applying
for probate or ad-
ministration.

Acts of sederunt
to be passed for
following out pur-
poses of this act.

Former acts of
sederunt repealed
if inconsistent
with this act.

Interpretation of
terms.

visions were herein enacted in reference to such probates, letters of administration, and inventories respectively.

XVII. Provided, that in any case where, on applying for probate or letters of administration, it shall be required to be stated as aforesaid that the deceased was domiciled in England or in Ireland, the affidavit so as aforesaid required by law shall specify the fact according to the deponent's belief, which shall be sufficient to authorize the same to be so stated in or upon the probate or letters of administration: provided also, that any such statement, and the interlocutor of the commissary finding that the deceased was domiciled in Scotland, shall be evidence, and have effect for the purposes of this act only.

XVIII. It shall be competent to the Court of Session, and they are hereby authorized and required from time to time, to pass such acts of sederunt as shall be necessary and proper for regulating in all respects the proceedings under this act before the commissary of Edinburgh and other commissaries in Scotland, and following out the purposes of this act, and also the fees to be paid to agents before the said Courts, and to the commissary clerks and other officers of Court, and the expense of publication of petitions.

XIX. All former acts, and acts of sederunt made in virtue thereof, so far as inconsistent with the present act, are hereby repealed; and this act may be amended or repealed by any act to be passed during the present session of parliament, and may be cited as the "Confirmation and Probate Act, 1858."

XX. The word "commissary" shall include commissary depute, and the term "commissary clerk" shall include commissary clerk depute.

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A.)

Form of a Petition for Appointment of an Executor to a deceased Person.

Unto the honourable the commissary of [*specify the county*], the petitioner of A. B. [*here name and design the petitioner*];
Humbly sheweth,

That the late C. D. [*here name and design the deceased person to whom an executor is sought to be appointed*] died at [*specify place*] on or about the [*specify date*], and had at the time of his death his ordinary or principal domicile in the county of [*specify county or "further of Scotland," or "without any fixed domicile," or "without any known domicile," as the case may be*].

That the petitioner is the only son and next of kin [or state what other relationship, character, or title the petitioner has, giving him right to apply for the appointment of executor].

21 & 22 Vict.
c. 56.

May it therefore please your Lordship to decern the petitioner executor dative quâ next of kin to the said C. D. [or state the other character in which the petitioner claims to be appointed executor].

According to justice, &c.

[Signed by the petitioner or his agent.]

SCHEDULE (B.)

Roll of Petitions for the Appointment of Executors in Commissary Courts in Scotland.

County.	Name and Designation of Petitioner.	Title of Petitioner.	Name and Designation of Defunct.	Place and Date of Death.
Edinburgh.	A. B., Writer in Edinburgh.	Next of Kin.	C. D., Merchant in Edinburgh.	No. —, George St., Edinburgh, 1st January, 1857.

SCHEDULE (C.)

Form of Certificate by Commissary Clerk of Publication of a Petition for the Appointment of an Executor.

I, A. B., commissary clerk [or "commissary clerk depute," as the case may be], of the county of [specify county], hereby certify that this petition was intimated by affixing a copy thereof on the door of the court-house [if some other place has been directed by the commissary specify it], on the [specify date], and by being published by the keeper of the record of edictal citations at Edinburgh, in the printed roll of petitions for the appointment of executors in the Commissary Courts of Scotland, printed and published on [specify date].

A. B.

SCHEDULE (D.)

Form of a Testament Dative or Confirmation of the Executor of a Person who has died without naming one.

I, A. B., commissary of the county of [specify county], considering that by my decree, dated [specify date], I decerned C. D. executor dative quâ next of kin [or other character, as the case may be], of the late E. F. who died at [specify place], on [specify date], and seeing that the said C. D. has since given up on oath an inventory of the personal estate and effects of the said E. F. at the time of his death situated in Scotland [or situated in Scotland and England, or in Scotland and Ireland, or in Scotland, England, and Ireland, as the case may be], amounting in value to pounds, which inventory has been recorded in my Court books of date [specify date], and that he has likewise found caution for his acts and intromissions as executor: therefore I, in her Majesty's name and authority, make, constitute, ordain, and confirm the said C. D. executor dative quâ [specify character] to the defunct, with full power to him to uplift, receive, administer and dispose of the said personal estate and effects, and

21 & 22 Vict.
c. 56.

grant discharges thereof, if needful to pursue therefor, and generally every other thing concerning the same to do that to the office of executor dative quâ [*specify character*] is known to belong; providing always, that he shall render just count and reckoning for his intromissions therewith when and where the same shall be legally required.

Given under the seal of office of the commissariat of [*specify county*],
and signed by the clerk of Court at [*specify place*], the [*specify date*].

To be signed by the commissary clerk or his depute, and sealed with the seal of office.

SCHEDULE (E.)

Form of a Testament Testamentar or Confirmation of an Executor Nominate.

I, A. B., commissary of the county of [*specify county*], considering that the late C. D. died at [*specify place*], upon [*specify date*], and that by his last will [*or other writing containing the nomination of executor*], dated [*specify date*], and recorded in my Court books upon [*specify date*], the said C. D. nominated and appointed E. F. to be his executor, and that the said E. F. has given up on oath an inventory of the personal estate and effects of the said C. D. at the time of his death situated in Scotland [*or situated in Scotland and England, or situated in Scotland and Ireland, or situated in Scotland, England, and Ireland (as the case may be)*], amounting in value to _____ pounds, which inventory has likewise been recorded in my Court books of date [*specify date*]: therefore I, in her Majesty's name and authority, ratify, approve, and confirm the nomination of executor contained in the foresaid last will [*or other writing containing the nomination of executor*]; and I give and commit to the said E. F. full power to uplift, receive, administer, and dispose of the said personal estate and effects, grant discharges thereof, if needful to pursue therefor, and generally every other thing concerning the same to do that to the office of an executor nominate is known to belong; providing always, that he shall render just count and reckoning for his intromissions therewith when and where the same shall be legally required.

Given under the seal of office of the commissariat of [*specify county*],
and signed by the clerk of Court at [*specify place*], the [*specify date*].

To be signed by the commissary clerk or his depute, and sealed with the seal of office.

SCHEDULE (F.)

I, A. B., commissary clerk [*or commissary clerk depute*] of the county of Edinburgh, hereby certify that this grant of probate has [*or these letters of administration have*] been produced in the Commissary Court of the said county, and that a copy thereof has been deposited with me.

20 & 21 VICT. c. 77, ss. 94, 95 (IRELAND).

20 & 21 Vict.
c. 77.

XCIV. From and after the period at which this act shall come into operation (1st January, 1858), when any probate or letters of administration to be granted by the Court of Probate in Eng-

land, shall be produced to and a copy thereof deposited with the Registrars of the Court of Probate in Ireland, such probate or letters of administration shall be sealed with the seal of the said last-mentioned Court, and being duly stamped, shall be of the like force and effect, and have the same operation in Ireland, as if it had been originally granted by the Court of Probate in Ireland.

20 & 21 Vict.
c. 77.

English grant sealed by Irish Court has same operation as Irish grant.

XCV. From and after the period at which this act shall come into operation (1st January, 1858), when any probate or letters of administration to be granted by the Court of Probate in Ireland, shall be produced to and a copy thereof deposited with the Registrars of the Court of Probate in England, such probate or letters of administration shall be sealed with the seal of the last-mentioned Court, and being duly stamped, shall be of the like force and effect, and have the same operation in England, as if it had been originally granted by the Court of Probate in England.

Irish grant sealed by English Court has same operation as English grant.

23 VICT. c. 5.

An Act to regulate Probate and Administration with respect to certain Indian Government Securities; to repeal certain Stamp Duties; and to extend the Operation of the Act of the Twenty-second and Twenty-third Years of Victoria, Chapter Thirty-nine, to Indian Bonds. [23rd March, 1860.]

23 Vict. c. 5.

WHEREAS at various times the executive government of India has raised moneys for the public service by the issue of government promissory notes and by government loans severally payable in India, and by various public notifications of the said government, or regulations to be made by the Secretary of State in council, the owners of such notes have been or may be allowed the privilege of having the current interest thereon made payable in London by drafts payable in India, and the holders or owners of shares or portions of such loans have been or may be allowed the privilege of having the same registered and made transferable, and the interest thereon made payable in London: and whereas upon the death of the holders of notes as to which the said privilege shall have been claimed questions may arise as to the place in which the same are properly to be deemed assets of the deceased owner, and it is for the convenience and advantage of the estates of such persons that the same should be deemed assets in this country and not in India: and whereas by an act passed in the session holden in the fifth

23 Vict. c. 5.

and sixth years of the reign of his late Majesty King William the Fourth, chapter sixty-four, section five, the transfer of any part of the territorial debt of the East India Company in India in the books of the said company in England, whether upon a sale thereof or otherwise, was made chargeable with a stamp duty of one pound ten shillings, and it is expedient to repeal so much of the said act as imposes the said stamp duty: and whereas under the authority of various Acts of Parliament the East India Company were empowered to raise money upon bonds to be issued under their common seal, and the said bonds formerly constituted the bond debt of the East India Company, and are commonly designated East India bonds: and whereas by an act passed in the session holden in the twenty-first and twenty-second years of the reign of her present Majesty, chapter one hundred and six, section sixty-seven, all liabilities of the East India Company were transferred to the Secretary of State in council: and whereas by an act passed in the last session of parliament, chapter thirty-nine, power was given to the Secretary of State in council to raise money by bonds or debentures or the creation of a capital stock or annuities upon or for the repayment of any principal money secured under the authority of the said act or of either of the acts therein recited: and whereas it is expedient to extend such power of raising money to the repayment of any of the East India bonds aforesaid: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, as follows; (that is to say,)

Indian Government notes on which interest is payable in London, and certain Indian Government promissory notes, to be deemed bona notabilia in England.

I. All Indian Government promissory notes and certificates issued or stock created in lieu thereof, being assets of a deceased person, the interest whereon or in respect of which shall be payable in London by drafts payable in India, and which at the decease of the owner thereof shall have been registered in the books of the Secretary of State in council in London, or in the books of the Governor and Company of the Bank of England, or shall have been enfaced in India for the purpose of being so registered before the decease of the owner thereof, and all Indian Government promissory notes issued with coupons attached which, under such regulations and conditions as may be determined from time to time by the Secretary of State in council, shall be so registered, and all certificates issued or stock created in lieu thereof, shall be deemed and taken to be personal estate and bona notabilia of such deceased person in England, and probate or letters of administration in England, or confirmation granted in Scotland, and sealed with the seal of the Principal Court of Probate in England, in pursuance of the provisions of the "Confirmation and Probate Act, 1858," shall

Probate, &c., or confirmation granted in Scotland valid, &c.

be valid and sufficient to constitute the persons therein named the legal personal representatives of the deceased with respect to such notes and moneys as aforesaid. 23 Vict. c. 5.

II. So much of the fifth section of the said first recited act as enacts that every transfer of any part of the said territorial debt in the books of the East India Company in England, whether upon a sale thereof or otherwise, shall be chargeable with a stamp duty of one pound ten shillings and no more, is hereby repealed; and no transfer of any part of the said territorial debt or of Indian Government loans registered and transferable in the books of the Secretary of State in council in London, or in the books of the governor and company of the Bank of England, shall be chargeable with any stamp duty.

Transfers of territorial debt and of Indian Government loans not chargeable with stamp duty.

III. Upon or for the repayment of any principal money secured by the said bonds, the Secretary of State in council may at any time borrow or raise, by all or any of the modes authorized by the said recited act passed in the session holden in the twenty-second and twenty-third years of her present majesty, chapter thirty-nine, all or any part of the principal money so repaid or to be repaid, and so from time to time as all or any part of the principal money secured by the said bonds may have been repaid or require to be repaid, but the amount to be charged upon the revenues of India shall not in any case exceed the principal money repaid or required to be repaid; and the provisions of the said recited act with reference to the creation of the capital stock and annuities created under the authority of the said act, and with reference to the issue, payment, and transfer of the capital stock, annuities, bonds, and debentures issued under the authority of the said act, shall be held to be in force and to apply to the creation, issue, payment, and transfer of the capital stock, annuities, bonds, and debentures created and issued under the authority of this act.

Power to raise money under Act 22 & 23 Vict. c. 39, extended to repayment of East India bonds.

APPENDIX II.

RULES, ORDERS AND INSTRUCTIONS FOR THE REGISTRARS OF THE PRINCIPAL REGISTRY OF HER MAJESTY'S COURT OF PROBATE,

*Made under the Provisions of the Statutes 20 & 21 Vict. c. 77, and
21 & 22 Vict. c. 95,*

IN RESPECT OF

NON-CONTENTIOUS BUSINESS.

Commencement
of.

All rules, orders, and instructions heretofore made and issued for the Registrars of the Principal Registry of her Majesty's Court of Probate in respect of non-contentious business shall be repealed, on and after the first day of September, 1862, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following rules, orders, and instructions in respect of non-contentious business shall take effect on and after the first day of September, 1862.

Non-Contentious
Business.

NON-CONTENTIOUS BUSINESS shall include all common form business as defined by the "Court of Probate Act, 1857," and the warning of caveats.

Applications for
grants.

1. APPLICATION FOR PROBATE OR LETTERS OF ADMINISTRATION may be made at the Principal Registry in all cases.

2. Such applications may be made through a proctor, solicitor, or attorney, or in person by executors and parties entitled to grants of administration; but these latter applications will not be received by letter, nor through the medium of any agent.

3. The Registrars are not to allow probate or letters of administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction. The Registrars are notwithstanding to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

AS TO PROBATE OF WILLS AND CODICILS AND LETTERS OF ADMINISTRATION WITH THE WILL OR [WILL AND CODICILS] ANNEXED, WHERE THE WILLS AND CODICILS ARE DATED AFTER 31ST DECEMBER, 1837.

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Business.

Execution of a Will.

4. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the Registrars must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, sect. 9 and 15 Vict. c. 24, in reference to the execution were in fact complied with; and such affidavit must be engrossed and form part of the probate.

Wills dated after
31st December,
1837.

5. If on perusing the affidavits of both the subscribing witnesses it appear that the requirements of the statute were not complied with, the Registrars must refuse probate.

6. If on perusing the affidavit or affidavits setting forth the facts of the case it appear doubtful whether the will or codicil has been duly executed, the Registrars may require the parties to bring the matter before the Judge on motion.

7. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will or codicil; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

Interlineations and Alterations.

8. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto.

9. When interlineations or alterations appear in the will (unless duly executed, or recited in, or otherwise identified by, the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal, or when they are of but small importance and are evidenced by the initials of the attesting witnesses.

Erasures and Obliterations.

10. Erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid

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Wills dated after
31st December,
1837.

by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be ascertained, they must form part of the probate.

11. In every case of words having been erased or obliterated which might have been of importance, an affidavit must be required.

Deeds, &c. referred to in a Will or Codicil.

12. If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the production of such deed, paper, memorandum or other document must be required, with a view to ascertain whether it be entitled to probate; and, if not produced, its non-production must be accounted for.

13. No deed, paper, memorandum or other document can form part of a will unless it was in existence at the time when the will was executed.

Appearance of the Paper.

14. If there are any vestiges of sealing wax or wafers or other marks upon the testamentary papers, leading to the inference that a paper, memorandum, or other document has been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memorandum, or other document must be required; and, if not produced, its non-production must be accounted for.

Married Woman's Will.

15. In granting probate of a married woman's will made by virtue of a power or administration with such will annexed, the power under which the will purports to have been made must be specified in the grant (a).

(a) Lord Penzance has had under his consideration an application made to him, on behalf of the Bank of England, with respect to stock in the public funds standing in the names of married women, and passing under wills made by them whilst under coverture. It is desired by the bank that, in such cases, the stock should be specified in the limitation of the grant of probate or letters of administration with will annexed, and Lord Penzance has directed the Registrars of the Principal Registry to comply with the desire of the bank so far as practicable. With this object, the Registrars will hereafter require that on

the draft oaths to lead such grant being brought to the Principal Registry for settlement a statement shall be furnished, setting forth the particulars of the property claimed to be appointed or disposed of by the will, and in case such property, or any portion of it, shall consist of stock in the public funds standing in the name of the testatrix, the exact amount and description of such stock, and how the same was acquired, and if acquired under a deed or will, a copy or abstract of the deed or will, or of so much thereof as may refer to the stock in question.

July, 1872.

Codicils.

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16. The above rules and orders respecting wills apply equally to codicils.

AS TO PROBATE OF WILLS, CODICILS, AND TESTAMENTARY PAPERS RELATING TO PERSONALTY, AND DATED BEFORE THE 1ST JANUARY, 1838.

Execution of a Will.

17. It is not necessary that a will, codicil, or testamentary paper dated before 1st January, 1838, should be signed by the testator or attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil, or testamentary disposition must be clearly proved by circumstances.

Wills dated before
1st January, 1838.

18. A will, codicil, or testamentary paper, signed at the end of it by the testator and attested by two disinterested witnesses (although there be no clause of attestation) is *primâ facie* entitled to probate.

19. In cases where a will, codicil, or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to the paper in the presence of one attesting witness, or produced it with his name already subscribed, or his mark already made, to one attesting witness, and afterwards produced it to the other attesting witness, provided that on each occasion he declared it to be his will, codicil, or testamentary disposition, or otherwise notified his intention that it should operate as such.

20. If the will, codicil, or testamentary paper is signed at the end of it by the testator but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

21. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

22. The circumstance of a person being named as an executor in the will, codicil, or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him or her incompetent to become an attesting witness to it, so that if the name

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Wills dated before
1st January, 1838.

of a person so interested appears as that of a subscribing witness to the will, codicil, or testamentary paper, the same, so far as regards his or her attestation, must be considered as unattested, and his or her evidence in support thereof will be inadmissible, unless he or she shall first release his or her interest thereunder.

23. If an attestation clause, or the word “witnesses,” appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *primâ facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

Appearance of Paper.

24. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration, or otherwise, and every circumstance leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.

Alterations and Interlineations.

25. Alterations and interlineations made by the testator, if unattested, are to be proved by the affidavits of two persons as to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that such alterations and interlineations were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 26.

Deeds, &c. referred to in a Will or annexed to a Will.

26. With respect to deeds, papers, memoranda, or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders, and instructions as to wills bearing date since the 31st December, 1837, will apply.

Republication by Codicil.

27. A will made before the 1st of January, 1838, is republished by a subsequent codicil thereto duly executed.

AS TO LETTERS OF ADMINISTRATION.

Notice to other Next of Kin.

28. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the Registrars may require proof by

affidavit or statutory declaration that notice of such application has been given to such other next of kin.

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Limited Administrations.

Letters of ad-
ministration.

29. LIMITED ADMINISTRATIONS are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the Judge.

30. No person entitled to a general grant of administration of the personal estate and effects of the deceased will be permitted to take a limited grant, except under the direction of the Judge.

Administrations under Section 73.

31. Whenever the Court under sect. 73 appoints an administrator other than the person who prior to the "Court of Probate Act, 1857," would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

Grants to an Attorney.

32. In the case of a person residing out of England, administration, or administration with the will annexed, may be granted to his attorney, acting under a power of attorney.

Grants of Administration to Guardians.

33. Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next of kin, or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.

34. In cases of infants (i. e. under the age of seven years) not having a testamentary guardian, or a guardian appointed by the High Court of Chancery, a guardian must be assigned by order of the Judge, or of one of the Registrars; the Registrar's order is to be founded on an affidavit, showing that the proposed guardian is either de facto next of kin of the infants, or that their next of kin de facto has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship.

35. Where there are both minors and infants, the guardian elected by the minors may act for the infants, without being specially assigned to them by order of the Judge, or a Registrar, provided that the object in view is to take a grant. If the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the Judge, or of a Registrar.

36. In all cases where grants of administration are to be made for the use and benefit of minors or infants, the adminis-

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ministration.

trators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent Court, or are the testamentary guardians of the minors or infants.

Administrator's Oath.

37. The oath of administrators, and of administrators with the will, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off, and the oath is to set forth, when the fact is so, that the party applying is the only next of kin, or one of the next of kin, of the deceased. In all administrations of a special character, the recitals in the oath, and in the letters of administration, must be framed in accordance with the facts of the case.

Administration Bonds.

38. Administration bonds are to be attested by an officer of the Principal Registry, by a District Registrar, or by a Commissioner, or other person now or hereafter to be authorized to administer oaths under 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, but in no case are they to be attested by the proctor, solicitor, attorney, or agent of the party who executes them. The signature of the administrator or administratrix to such bonds, if not taken in the Principal Registry, must be attested by the same person who administers the oath to such administrator or administratrix.

39. In all cases of limited or special administration, two sureties are to be required to the administration bond (unless the administrator be the husband of the deceased or his representative, in which case, but one surety will be required), and the bond is to be given in double the amount of the property to be placed in the possession of, or dealt with, by the administrator by means of the grant. The alleged value of such property is to be verified by affidavit, if required.

40. The administration bond is, in all cases of limited or special administrations, to be prepared in the Registry.

41. The Registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

Justification of Sureties.

42. When any person takes letters of administration in default of the appearance of persons cited, but not personally served, with the citation, and when any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed by the Court

of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the Registry, and the sureties to the administration bond must justify.

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GENERAL RULES AND ORDERS FOR THE REGISTRARS OF THE
PRINCIPAL REGISTRY.

Time of issuing Grant.

43. No probate or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge, or by order of two of the Registrars.

44. No letters of administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of the Judge, or by order of two of the Registrars.

45. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the Registrars. Should the certificate be unsatisfactory, the Registrars are to require such proof of the alleged cause of delay as they may see fit.

Filling up Grants.

46. All probates or letters of administration issued from the Principal Registry are to be filled up there.

Oath of Executors and Administrators.

47. The usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the Registry.

Identity of Parties.

48. The Registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

Testamentary Papers to be marked.

49. Every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will is sworn, must be marked by such executor or administrator, and by the person before whom he is sworn.

Renunciations.

50. No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased

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person in one character is to be allowed to take a representation to the same deceased in another character.

Affidavits.

51. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein.

52. In every affidavit made by two or more persons, the names of the several persons making it are to be writteu in the jurat.

53. No affidavit will be admitted in any matter in the Court of Probate of which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure.

54. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the Registrar, Commissioner, or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature, in the presence of the Registrar, Commissioner, or other authority before whom the affidavit was made.

55. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a partner or clerk of his proctor, solicitor, or attorney.

56. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

57. In every case where an affidavit is made by a subscribing witness to a will or codicil, such subscribing witness shall depose as to the mode in which the said will or codicil was executed and attested.

58. The Registrars are not to allow any affidavit to be filed (unless by leave of the Judge) which is not fairly and legibly written, or in which there is any interlineation, the extent of which at the time when the affidavit was sworn is not clearly shown by the initials of the Commissioner, or other person before whom it was sworn.

Caveats.

59. Any person intending to oppose the issuing of a grant of probate or letters of administration must, either personally or by his proctor, solicitor, or attorney, enter a caveat in the Principal Registry, or in a District Registry; if in the Principal Registry, the person entering the caveat must also insert the name of the deceased in the index to the caveat book.

60. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time.

61. The Registrars shall, immediately upon a caveat being entered, send notice thereof to the District Registrar of any district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

62. No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in a District Registry.

63. All caveats shall be warned from the Principal Registry. The warning is to be left at the place mentioned in the caveat as the address of the person who entered it.

64. It shall be sufficient for the warning of a caveat that a Registrar send by the public post a warning signed by himself, and directed to the person who entered the caveat, at the address mentioned in it.

65. The warning to a caveat is to state the name and interest of the party on whose behalf the same is issued, and if such person claims under a will or codicil, is also to state the date of such will or codicil, and is to contain an address within three miles of the General Post Office, at which any notice requiring service may be left. The form of warning will be supplied in the Registry.

66. Before any citation is signed by a Registrar, a caveat shall be entered against any grant being made in respect of the estate and effects of the deceased to which such citation relates, and notice thereof shall be sent to the District Registrar of any district in which the deceased appears to have resided at the time of his death.

67. In order to clear off a caveat when no appearance has been entered to a warning duly served, an affidavit of the service of the warning, stating the manner of service and an affidavit of search for appearance and of non-appearance, must be filed.

Citations.

68. No citation is to issue under seal of the Court until an affidavit, in verification of the averments it contains, has been filed in the Registry.

69. Citations are to be served personally when that can be done. Personal service shall be effected by leaving a true copy of the citation with the party cited, and showing him the original, if required by him so to do.

70. Citations and other instruments which cannot be personally served are to be served by the insertion of the same, or of

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Citations.

an abstract thereof, settled and signed by one of the Registrars as an advertisement in such morning and evening London newspapers, and such local newspapers, and at such intervals as the Judge or one of the Registrars may direct.

Blind and illiterate Testators.

71. The Registrars are not to allow probate of the will, or administration with the will annexed, of any blind or obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the testator before its execution, or that the testator had at such time knowledge of its contents.

Alterations in Grants, &c.

72. Whenever the value of the personal estate and effects of a deceased person is re-sworn under a different amount, or any alteration is made in a grant, or a grant is revoked, and the volume of the printed calendar containing the entry of such grant has been forwarded to the District Registrars, notice of such re-swearing, alteration, or revocation is without delay to be forwarded by the Registrars of the Principal Registry to all the District Registrars.

Irish Grants.

73. The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless it appear from a certificate of the Commissioners of Inland Revenue, or their proper officer, that such probate or letters of administration is duly stamped in respect of the personal estate and effects of which the deceased died possessed in England. In respect to letters of administration, the provisions of statute 21 & 22 Vict. c. 95, s. 29, must also be complied with.

Grants for Property in the United Kingdom.

74. Whenever a grant of probate or of letters of administration is made under statute 21 & 22 Vict. c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the Inland Revenue Office, that the testator or intestate died domiciled in England, and that he was possessed of personal estate in Scotland, other than that excluded by 22 & 23 Vict. c. 80, and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland, a separate affidavit and schedule must also be filed. Upon all such grants a note or memorandum must also be written and signed by one of the Registrars to the effect that the testator or intestate died domiciled in England.

*Notices to Queen's Proctor.*Non-Contentious
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75. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's Procurator General (or in case the deceased died domiciled within the duchy of Lancaster, to the solicitor for the duchy in London), in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take.

76. In the case of persons dying intestate without any known relation, a citation must be issued against the next of kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased, and the service thereof upon them shall be effected as required by Rule 70. Such citation must also be served upon the Queen's Proctor, or upon the solicitor for the duchy of Lancaster, as the case may require.

Transmission of Papers.

77. After motions have been made before the Judge in Court, the Registrars are, on the application of the parties (unless the Judge shall otherwise direct), to transmit to a District Registrar the original papers and documents, in order that the grant of probate or administration may be completed in a District Registry.

78. Papers and other documents may be transmitted by the Registrars of the Principal Registry to the District Registrars through the post office. Such letters or packets are to be superscribed with the words, "On her Majesty's Service," and may be registered, if thought necessary.

79. The Registrars are to take care that the copies of wills and affidavits to be annexed to the probates or letters of administration are fairly and properly written, and are to reject those which are otherwise; but it shall not be necessary that such copies be written in the engrossing hand heretofore in use (a).

Office Copies.

80. Office copies of wills, and other documents furnished in the Principal Registry, will not be collated with the original will or other document, unless specially required. Every copy so required to be examined, shall be certified under the hand

(a) This rule was made on the former one, which required the engrossing hand theretofore in use.
29th December, 1865, in lieu of the

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Office copies.

of one of the Registrars of the Principal Registry, to be an examined copy.

81. The seal of the Court is not to be affixed to any office copy of a will, or other document, unless the same has been certified to be an examined copy.

Attendances with Documents.

82. If a will or other document filed in the Registry is required to be produced at any place within three miles of the Principal Registry, application must be made for that purpose not later than the day previously to that named for its production.

83. If a will or other document filed in the Registry is required to be produced at any place beyond the above distance, application must be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document to be deposited in its place, and in every case such notice must be given (except by special leave of the Judge or Registrars) at least twenty-four hours before the clerk in whose charge the will or other document is to be placed will be required to set off.

Subpœnas to bring in Testamentary Papers.

84. Any person bringing in a will or testamentary paper, in obedience to a subpœna, is to take it in the first instance to the clerk of the papers, who will prepare a minute to be signed by the Registrar to whom the will or paper brought in is to be delivered, and the Registrar will sign the minute recording the delivery thereof.

85. The minute is to be entered in the book of Registrar's minutes in the usual manner; and the fee for the entry, and a further fee for filing each testamentary paper, will then be payable. If these fees should not be paid by the person bringing in the will or paper, the same are to be charged to the person who may first apply to the clerk of the papers to make use of the will or paper so brought in. In case the person bringing in a will or testamentary paper may desire to have a voucher for its delivery into the Registry, he may take an office copy of the minute on paying the usual fee for the same.

86. Any person served with a subpœna to bring in a testamentary paper, is at liberty to enter an appearance on payment of the usual fees, if he thinks fit to do so.

Time allowed for appearing to a Warning, Citation, or Subpœna.

87. The time fixed by a warning or citation for entering an appearance or by a subpœna, to bring in a testamentary paper,

shall, in all cases, be exclusive of Sundays, Christmas Day, and Good Friday.

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TAXING BILLS OF COSTS.

88. Any bill of costs may be referred to the Registrars of the Principal Registry for taxation, and no special order shall hereafter be required for the purpose.

89. The bill of costs of any proctor, solicitor, or attorney will be taxed on his application, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner, and the Registrar shall decide in each case what may be a sufficient notice.

90. When an appointment has been made by a Registrar to tax a bill, the Registrar may proceed to tax the same after the expiration of a quarter of an hour, notwithstanding the absence of either party, or his agent, provided he be satisfied that the absent party has had due notice of the appointment for taxation.

91. If more than one sixth is deducted from any bill of costs taxed as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill.

RULES, ORDERS AND INSTRUCTIONS

AS TO

PERSONAL APPLICATIONS

For Grants of Probate or Letters of Administration.

1. Persons wishing to obtain grants of probate or letters of administration without the intervention of a proctor, solicitor, or attorney, must apply in person at the department for personal applications, and not by letter.

2. No such application will be received through an agent of any kind (whether paid or unpaid).

3. The applications of parties who are attended by a person acting or appearing to act as their adviser in the matter will not be entertained.

4. All fees are to be paid in advance in Probate Court stamps.

5. Applications which have in the first instance been made through a proctor, solicitor, or attorney at the Principal Registry, or at a District Registry, cannot be transferred to this department.

6. Applications for grants of probate or administration in cases which have already been before the Court (on motion or otherwise) will not be entertained [as personal applications, D. R.] at this department, but must be made through a proctor, solicitor, or attorney.

7. Whenever it becomes necessary, in the course of [a personal] proceeding with an application which has been entertained at this department, to obtain the directions of the Court, the application will not be proceeded with, but must be placed in the hands of a proctor, solicitor, or attorney.

8. The papers necessary to lead the grant applied for will be prepared in this department. An applicant is, however, at liberty to bring such papers, or any of them, filled up, *but not sworn to*, and the same, if correct, may be received (the usual fee for perusal being charged). All further papers which may be required will be drawn in this department. Testamentary papers once deposited in this department will not be given out unless under special circumstances, and by permission of one of the Registrars.

9. When it is necessary to administer an oath or take an affirmation the party shall be sworn or affirmed before some

proper authority of the Principal Registry, or of a District Registry, unless otherwise permitted by one of the Registrars.

Personal Appli-
cations.

10. Every applicant for a first grant of probate or letters of administration must produce a certificate of the death or burial of the deceased, or give a reason to the satisfaction of one of the Registrars for the non-production thereof.

11. Every applicant must be prepared with a reference to some person of position or character, to establish his or her identity.

12. The engrossments of wills and testamentary papers will be made in the Registry.

13. Every applicant for a grant of probate or letters of administration shall give under his or her hand a schedule of the property to be affected by the grant in the form hereunto annexed (*a*), marked A. (The necessary forms will be provided in the Registry.)

14. Legal advice is not to be given to applicants, either with respect to the property to be included in the above-mentioned schedule, or upon any other matter connected with the application, and the clerks in this department are only to be held responsible for embodying in a proper form the instructions given to them, but they will, as far as practicable, assist applicants by giving them information and directions as to the course which they must pursue.

15. A receipt or acknowledgment of each application will be handed to the applicant, and the production of such receipt will be required of the person who attends to obtain the grant when completed.

16. No clerk or officer of this department is to become surety to any administration bond.

17. All administration bonds in cases of personal applications are to be executed in this department, or in a District Registry; if executed in this department the bond must be attested by the chief clerk or senior clerk in attendance.

(*a*) See p. 460.

RULES, ORDERS AND INSTRUCTIONS
FOR THE DISTRICT REGISTRARS OF HER MAJESTY'S
COURT OF PROBATE,

*Made under the Provisions of the Statutes 20 & 21 Vict. c. 77,
and 21 & 22 Vict. c. 95,*

IN RESPECT OF

NON-CONTENTIOUS BUSINESS.

Commencement
of.

All rules, orders and instructions heretofore made and issued for the District Registrars of her Majesty's Court of Probate in respect of non-contentious business shall be repealed, on and after the second day of March, 1863, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following rules, orders and instructions in respect of non-contentious business shall take effect on and after the second day of March, 1863.

Non-Contentious
Business.

NON-CONTENTIOUS BUSINESS shall include all common form business as defined by the "Court of Probate Act, 1857," and the waruing of caveats.

Applications for
grants.

1. **APPLICATION FOR PROBATE OR LETTERS OF ADMINISTRATION** may be made at the Principal Registry in all cases. Application may also be made at a District Registry in cases where the deceased, at the time of his death, had a fixed place of abode within the district in which the application is made, and not otherwise.

2. Such applications may be made through a proctor, solicitor, or attorney, or in person by executors and parties entitled to grants of administration.

3. The District Registrar, before he entertains any application for probate or letters of administration, must ascertain that the deceased had, at the time of his death, a fixed place of abode within his district.

4. The District Registrar is not to allow probate or letters of administration to issue until all the inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to applications made in person by executors and others. The District Registrar is notwithstanding

to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

Non-Contentious
Business.

5. No District Registrar or clerk in a District Registry shall directly or indirectly transact business for himself or as the proctor or solicitor of any other person in the District Registry to which he has been appointed.

AS TO PROBATE OF WILLS AND CODICILS AND LETTERS OF ADMINISTRATION, WITH THE WILL [OR WILL AND CODICILS] ANNEXED, WHERE THE WILLS AND CODICILS ARE DATED AFTER 31ST DECEMBER, 1837.

Execution of a Will.

6. Upon receiving an application for probate or letters of administration with the will annexed, the District Registrar must inspect the will and each codicil, and see whether by the terms of the attestation clause (if any) it is shown that the same have been executed in accordance with the provisions of statutes 1 Vict. c. 26, and 15 Vict. c. 24.

7. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the District Registrar must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution were in fact complied with; and such affidavit must be engrossed and form part of the probate.

8. If on perusing the affidavits of both the subscribing witnesses it appear that the requirements of the statute were not complied with, the District Registrar must refuse probate.

9. If on perusing the affidavit or affidavits, setting forth the facts of the case, it appear doubtful whether the will or codicil has been duly executed, the District Registrar must transmit a statement of the matter to the Registrars of the Principal Registry, who may require the parties to bring the matter before the Judge on motion.

10. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will or codicil: but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

Non-Contentious
Business.

Wills dated after
31st December,
1837.

Interlineations and Alterations.

11. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto.

12. When interlineations or alterations appear in the will (unless duly executed, or recited in or otherwise identified by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal, or when they are of but small importance, and are evidenced by the initials of the attesting witnesses.

Erasures and Obliterations.

13. Erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be ascertained, they must form part of the probate.

14. In every case of words having been erased or obliterated which might have been of importance, an affidavit must be required.

Deeds, &c., referred to in a Will.

15. If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the production of such deed, paper, memorandum, or other document must be required, with a view to ascertain whether it be entitled to probate; and, if not produced, its non-production must be accounted for.

16. No deed, paper, memorandum, or other document can form part of a will unless it was in existence at the time when the will was executed.

Appearance of the Paper.

17. If there are any vestiges of sealing wax or wafers or other marks upon the testamentary papers, leading to the inference that a paper, memorandum, or other document has been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memoran-

dum, or other document must be required ; and, if not produced, its non-production must be accounted for.

Non-Contentious
Business.

Married Woman's Will.

18. In granting probate of a married woman's will made by virtue of a power or administration with such will annexed, the power under which the will purports to have been made must be specified in the grant.

Wills dated after
31st December,
1837.

Codicils.

19. The above rules and orders respecting wills apply equally to codicils.

Doubtful Cases.

20. If it be doubtful whether any will or codicil be entitled to probate, or whether any interlineation, alteration, erasure, or obliteration ought to prevail, or whether any deed, paper, memorandum, or other document ought to form part of a will or codicil, or if any doubt arise in consequence of the appearance of the paper, or on any other point, the District Registrar must communicate with the Registrars of the Principal Registry.

Letters of Administration with Will annexed.

21. The right of parties to letters of administration with the will annexed, and letters of administration with the will annexed de bonis non, depends so entirely upon the circumstances of each particular case taken in connexion with the wording of the will, that no general rules, other than those which have obtained a judicial sanction, can be laid down for the guidance of the District Registrars. Whenever the right of the party applying is at all questionable, a statement of the case, accompanied by a copy of the will, must be transmitted to the Registrars of the Principal Registry, who will advise thereon.

AS TO PROBATE OF WILLS, CODICILS, AND TESTAMENTARY PAPERS RELATING TO PERSONALTY, AND DATED BEFORE THE 1ST JANUARY, 1838.

Execution of a Will.

22. It is not necessary that a will, codicil, or testamentary paper dated before 1st January, 1838, should be signed by the testator or attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid ; but in such cases the testator's intention that it should operate as his will, codicil, or testamentary disposition must be clearly proved by circumstances.

Non-Contentious
Business.

Wills dated before
1st January, 1838.

23. A will, codicil, or testamentary paper, signed at the end of it by the testator and attested by two disinterested witnesses (although there be no clause of attestation) is *primâ facie* entitled to probate.

24. In cases where a will, codicil, or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of one attesting witness, or produced it with his name already written or his mark already made, to one attesting witness, and afterwards produced it to the other attesting witness, provided that on each occasion he declared it to be his will, codicil, or testamentary disposition, or otherwise notified his intention that it should operate as such.

25. If the will, codicil, or testamentary paper is signed at the end of it by the testator but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

26. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

27. The circumstance of a person being named as an executor in the will, codicil, or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him or her incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will, codicil, or testamentary paper, the same, so far as regards his or her attestation, must be considered as unattested, and his or her evidence in support thereof will be inadmissible, unless he or she shall first release his or her interest thereunder.

28. The will, codicil, or testamentary paper should appear on the face of it to be a complete document; if an attestation clause or the word "witnesses" appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *primâ facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

Appearance of Paper.

29. Any appearance of an attempted cancellation of a testamentary paper by burning, tearing, obliteration, or otherwise,

and every circumstance leading to a presumption of abandonment or revocation of such a paper on the part of the testator, must be accounted for or explained by affidavits. In such cases the testamentary paper, and the evidence taken in support of it, should be transmitted to the Registrars of the Principal Registry.

Non-Contentious
Business.

Wills dated before
1st January, 1838.

Alterations and Interlineations.

30. Alterations and interlineations made by the testator, if unattested, are to be proved by the affidavits of two persons as to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that such alterations and interlineations were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st December, 1837, are subject to the provisions of 1 Vict. c. 26.

Deeds, &c., referred to in a Will or annexed to a Will.

31. With respect to deeds, papers, memoranda, or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders, and instructions as to wills bearing date since the 31st December, 1837, will apply.

Republication by Codicil.

32. A will made before the 1st of January, 1838, is republished by a subsequent codicil thereto duly executed.

AS TO LETTERS OF ADMINISTRATION.

33. The duties of the District Registrar in granting letters of administration are, in many respects, the same as in cases of probate. In both cases he must ascertain the time and place of the deceased's death, and the value of the property to be covered by the grant, and see that the applicant has been sworn as required by statute 55 Geo. 3, c. 184.

Notice to other Next of Kin.

34. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the District Registrar may require proof by affidavit, or statutory declaration, that notice of such application has been given to such other next of kin.

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Non-Contentious
Business,

Letters of ad-
ministration.

Limited Administrations.

35. LIMITED ADMINISTRATIONS are not to be granted, unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the Judge.

36. No person entitled to a general grant of administration of the personal estate and effects of the deceased will be permitted to take a limited grant, except under the direction of the Judge.

Administrations under Section 73.

37. Whenever the Court, under sect. 73, appoints an administrator other than the person who, prior to the "Court of Probate Act, 1857," would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

Grants to an Attorney.

38. In the case of a person residing out of England, administration, or administration with the will annexed, may be granted to his attorney, acting under a power of attorney.

Grants of Administration to Guardians.

39. Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next of kin, or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.

40. In all cases of infants (i. e. under the age of seven years), a guardian must be assigned by order of the Judge, or of one of the Registrars of the Principal Registry; the Registrar's order is to be founded on an affidavit, showing that the proposed guardian is either de facto next of kin of the infants, or that their next of kin de facto has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship.

41. Where there are both minors and infants, the guardian elected by the minors may act for the infants, without being specially assigned to them, by order of the Judge, or a Registrar of the Principal Registry, provided that the object in view is to take a grant. If the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the Judge, or of a Registrar of the Principal Registry.

42. In all cases where grants of administration are to be made for the use and benefit of minors or infants, the administrators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under

the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent Court, or are the testamentary guardians of the minors or infants.

Non-Contentious
Business.

Letters of admin-
istration.

Administrator's Oath.

43. The oath of administrators, and of administrators with the will, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off, and is to set forth, when the fact is so, that the party applying is the only next of kin, or one of the next of kin, of the deceased. In all administrations of a special character, the recitals in the oath, and in the letters of administration, must be framed in accordance with the facts of the case.

Administration Bonds.

44. Administration bonds are to be attested by an officer of the Principal Registry, by a District Registrar, or his chief clerk, or by a commissioner or other person now or hereafter to be authorized to administer oaths under 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, but in no case are they to be attested by the proctor, solicitor, attorney, or agent of the party who executes them. The signature of the administrator or administratrix to such bonds, if not taken in the Principal or District Registry, must be attested by the same person who administers the oath to such administrator or administratrix.

45. In ordinary cases, two sureties are to be required, but when the property is *bonâ fide* under the value of fifty pounds, one surety only may be taken to the administration bond.

46. In all cases of limited or special administration, two sureties are to be required to the administration bond (unless the administrator be the husband of the deceased, or his representative, in which case, but one surety will be required), and the bond is to be given in double the amount of the property to be placed in the possession of, or dealt with by, the administrator by means of the grant. The alleged value of such property is to be verified by affidavit, if required.

47. The administration bond is, in all cases of limited or special administrations, to be prepared in the District Registry.

48. The District Registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

Justification of Sureties.

49. When any person takes letters of administration in default of the appearance of persons cited, but not personally served with the citation, and when any person takes letters of administration for the use and benefit of a lunatic or person of

Non-Contentious
Business.

Letters of admin-
istration.

unsound mind, unless he be a committee appointed by the Court of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the Registry, and the sureties to the administration bond must justify.

GENERAL RULES AND ORDERS FOR THE DISTRICT REGISTRARS.

Last Wills.

50. The District Registrar is not, in any case in which a will apparently duly executed has been produced to him for probate or for administration with the will annexed, to grant probate of any former will, or administration with any former will annexed, or administration to the deceased, as having died intestate, without an order of the Judge or of one of the Registrars of the Principal Registry, showing that the last will is not entitled to probate. In the absence of such order the District Registrar is to communicate with the Registrars of the Principal Registry.

Time of issuing Grant.

51. No probate or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge, or by order of one of the Registrars of the Principal Registry.

52. No letters of administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of the Judge, or by order of one of the Registrars of the Principal Registry.

53. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified by the practitioner to the District Registrar. Should the certificate be unsatisfactory, or the case be one of personal application, the District Registrar is to require an affidavit, or to communicate with the Registrars of the Principal Registry.

Filling up Grant.

54. Every grant of probate or of letters of administration issued from a District Registry is to be filled up therein, and any former grant which has been revoked or has ceased is to be cleared off therein.

Notices of Applications.

55. Notices of applications for grants of probate or administration, with the will annexed, transmitted by the District

Non-Contentious
Business.Notices of
applications.

Registrar to the Registrars of the Principal Registry, are to contain (in addition to the particulars specified in sect. 49 of the "Court of Probate Act, 1857") an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration.

56. Notices of application are to set forth the names and interests of all persons who, according to the practice of the Court, would have a prior right to the applicant, and to show how such prior right is cleared off. In case the persons or any of them have renounced, the date of his or her renunciation must be stated. If the applicant claims as the representative of another person, the date and particulars of the grant to him must appear.

Oath of Executors and Administrators.

57. The usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the Registry.

58. The draft oaths to lead grants of special or limited probate or administration, with or without the will annexed, are to be transmitted by the District Registrar to the Registrars of the Principal Registry, in order to their being settled, and no special or limited grant is to issue until the draft oath to lead the same has been settled by a Registrar of the Principal Registry.

Identity of Parties.

59. The District Registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

Testamentary Papers to be marked.

60. Every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will is sworn, must be marked by such executor or administrator and by the person before whom he is sworn.

Renunciations.

61. No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character.

Revocation and Alteration of Grants.

62. Grants of probate or letters of administration can only be

Non-Contentious
Business.

Revocation and
alteration of
grants.

revoked by order of the Judge or of one of the Registrars of the Principal Registry.

63. No grant of probate or letters of administration is to be altered by a District Registrar, without an order of a Registrar of the Principal Registry having been previously obtained. In case the name of the testator or intestate requires alteration, the notice of application must be renewed, and the alteration ordered is not to be made by the District Registrar until the usual certificate on such notice has been received from the Principal Registry.

Affidavits.

64. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein.

65. In every affidavit made by two or more persons the names of the several persons making it are to be written in the jurat.

66. No affidavit will be admitted in any matter in the Court of Probate of which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure.

67. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the District Registrar, commissioner, or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature, in the presence of the District Registrar, commissioner, or other authority before whom the affidavit was made.

68. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a partner or clerk of his proctor, solicitor, or attorney.

69. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

70. In every case where an affidavit is made by a subscribing witness to a will or codicil, such subscribing witness shall depose as to the mode in which the said will or codicil was executed and attested.

71. The District Registrars are not to allow any affidavit to be filed (unless with the concurrence of the Registrars of the Principal Registry) which is not fairly and legibly written, or in which there is any interlineation, the extent of which at the time the affidavit was made is not clearly shown by the initials

of the commissioner or other person before whom it was sworn.

Non-Contentious
Business.

Caveats.

72. Any person intending to oppose the issuing of a grant of probate or letters of administration must, either personally or by his proctor, solicitor, or attorney, enter a caveat in the Principal Registry, or in the proper District Registry.

73. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time.

74. The District Registrar shall, immediately upon a caveat being entered, send a copy thereof to the Registrars of the Principal Registry, and also to the Registrar of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

75. No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in the Principal Registry.

76. Caveats shall be warned from the Principal Registry only.

77. After a caveat has been entered, the District Registrar is not to proceed with the grant of probate or administration to which it relates until it has expired or been subducted, or until he has received notice from the Principal Registry that the caveat has been warned and no appearance given, or that the contentious proceedings consequent on the caveat have terminated.

78. The further rules in respect to caveats will be found in the "Rules, Orders and Instructions for the Registrars of the Principal Registry."

Citations and Subpœnas.

79. Citations and subpœnas can be issued from the Principal Registry only, and the rules applicable to them will be found in the "Rules, Orders and Instructions for the Registrars of the Principal Registry."

80. No grants are to issue from a District Registry after a citation without the production of an office copy of the decree or order of the Judge, or of one of the Registrars of the Principal Registry authorizing the same.

Blind and illiterate Testators.

81. The District Registrars are not to allow probate of the will, or administration with the will annexed, of any blind or obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over

Non-Contentious
Business.

Blind, &c. testa-
tors.

to the testator before its execution, or that the testator had at such time knowledge of its contents. When such information is not forthcoming, the District Registrars are to communicate with the Registrars of the Principal Registry.

Alterations in Grants, &c.

82. Whenever the value of the personal estate and effects of a deceased person is re-sworn under a different amount, or any alteration is made in a grant, or a renunciation is filed, notice of such re-swearing, alteration or renunciation is without delay to be forwarded by the District Registrar to the Registrars of the Principal Registry, but no fee shall be payable in respect of any such notice.

Lists of Grants.

83. The lists of grants of probate and administration required to be furnished by the District Registrars under section 51 of the "Court of Probate Act, 1857," are to be furnished on the first and every other Thursday in the month, and are to contain the name of the Registry in which each grant was made; and the christian and surname of each testator and intestate.

84. Every such list of grants furnished by the District Registrar is to be accompanied by a copy of the record of each grant mentioned in it. The record, besides stating the necessary particulars of the grant to which it refers, is to contain the place and time of death of the testator or intestate; the names and description of each executor or administrator; the date of each grant; and the sum under which the value of the personal estate and effects is sworn, and in cases of administrations the names and description of the sureties.

85. Within four days from the end of each month each District Registrar is to forward to the Principal Registry a return, arranged alphabetically, of all grants of probate or letters of administration passed at his District Registry during the preceding month.

Grants for Property in the United Kingdom, &c.

86. Whenever a grant of probate or of letters of administration is made under statute 21 & 22 Vict. c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the inland revenue office that the testator, or intestate, died domiciled in England, and that he was possessed of personal estate in Scotland other than that excluded by 22 & 23 Vict. c. 80, and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland, a separate affidavit and schedule must also be filed. Upon all such grants a note or memorandum must also be written and signed by the District Registrar to the effect that the testator or intestate died domiciled in England.

87. Grants of probate and administration made in Ireland and confirmations granted in Scotland must be taken to the Principal Registry, and not to a District Registry, to be sealed with the seal of the Court of Probate, in order to the same having force and effect in England.

Non-Contentious
Business.

Grants for the
United Kingdom.

Notices to Queen's Proctor.

88. In all cases where application is made for letters of administration (with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow without issue, notice of such application is to be given to her Majesty's Procurator-General (or in case the deceased died domiciled within the Duchy of Lancaster, to the solicitor for the Duchy in London), in order that he may determine whether he will interfere on the part of the crown; and no grant is to be issued until the officer of the crown has signified the course which he thinks proper to take.

89. In the case of persons dying intestate without any known relation, a citation must be issued from the Principal Registry against the next of kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased. See the rules, orders and instructions for the Registrars of the Principal Registry.

Transmission of Papers.

90. When motions are to be made before the Judge in Court, with regard to any application for probate or administration at a District Registry, the District Registrar is to transmit all original papers and documents to the Principal Registry, and the same, after the directions of the Court have been taken, will, on the application of the parties, be returned to the District Registrar together with an office copy of the decree of the Judge.

91. Original papers are also to be forwarded to the Principal Registry whenever an inspection of them is necessary, in order to enable the Registrars to answer the questions submitted to them by the District Registrar.

92. Original papers and documents may be transmitted by the District Registrars to the Registrars of the Principal Registry through the post office. Such letters or packets are to be superscribed with the words "On her Majesty's Service," and may be registered, if thought necessary.

Probate Copies of Wills.

93. The District Registrar is to take care that the copies of wills and affidavits to be annexed to the probate or letters of administration are fairly and properly written, and is to reject those which are otherwise.

Non-Contentious
Business.*Office Copies.*

94. Office copies of wills, and other documents furnished in a District Registry, will not be collated with the original will or other document, unless specially required. Every copy so required to be examined shall be certified under the hand of the District Registrar to be an examined copy.

95. The seal of the Court is not to be affixed to any office copy of a will, or other document, unless the same has been certified to be an examined copy.

Attendances with Documents.

96. If a will or other document filed in a District Registry is required to be produced at any place within three miles of that Registry, application must be made for that purpose not later than the day previously to that named for its production.

97. If a will or other document filed in a District Registry is required to be produced at any place beyond the above distance, application must be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document to be deposited in its place.

Doubtful and difficult Cases.

98. The District Registrars are in every case of doubt or difficulty to communicate with the Registrars of the Principal Registry.

TAXING BILLS OF COSTS.

99. All bills of costs are to be referred to the Registrars of the Principal Registry for taxation, and no special order shall be required for the purpose.

100. The rules in respect to taxing bills of costs will be found in the "Rules, Orders and Instructions for the Registrars of the Principal Registry."

RULES, ORDERS AND INSTRUCTIONS

AS TO

PERSONAL APPLICATIONS

For Grants of Probate or Letters of Administration in the District Registries attached to the Court of Probate.

1. Persons wishing to obtain grants of probate or letters of administration without the intervention of a proctor, solicitor, or attorney, must apply at the District Registry in person, and not by letter.

2. No such application will be received through an agent of any kind (whether paid or unpaid).

3. The applications of parties who are attended by a person acting or appearing to act as their adviser in the matter will not be entertained.

4. All fees are to be paid in advance in Probate Court stamps.

5. An application which has in the first instance been made through a proctor, solicitor, or attorney, cannot be afterwards treated as a personal application.

6. Applications for grants of probate or administration in cases which have already been before the Court (on motion or otherwise) will not be entertained as personal applications, but must be made through a proctor, solicitor, or attorney.

7. Whenever it becomes necessary, in the course of proceeding with a personal application, to obtain the directions of the Court, the application will not be proceeded with, but must be placed in the hands of a proctor, solicitor, or attorney.

8. The papers necessary to lead the grant applied for will be prepared in the District Registry. An applicant is, however, at liberty to bring such papers, or any of them, filled up, *but not sworn to*, and the same, if correct, may be received (the usual fee for perusal being charged). All further papers which may be required will be drawn in the District Registry. Testamentary papers once deposited in the District Registry will not be given out unless under special circumstances, and by permission of a Registrar of the Principal Registry.

9. When it is necessary to administer an oath or take an affirmation, the party shall be sworn or affirmed before some proper authority of the Principal Registry, or of a District Registry, unless otherwise permitted by the District Registrar.

10. Every applicant for a first grant of probate or letters of administration must, if required by the District Registrar, produce a certificate of the death or burial of the deceased, or give a satisfactory reason for the non-production thereof.

... Personal Appli-
cations.

11. The District Registrar may require in any case he sees fit a reference to some person of position or character, to establish the identity of the applicants.

12. The engrossments of wills and testamentary papers are to be made in the District Registry, from which the grant is to issue.

13. Every applicant for a grant of probate or letters of administration shall give under his or her hand a schedule of the property to be effected by the grant in the form hereunto annexed, marked A. (The necessary forms will be provided in the District Registry.)

14. Legal advice is not to be given to applicants either with respect to the property to be included in the above-mentioned schedule, or upon any other matter connected with the application, and the District Registrar is only to be held responsible for embodying in a proper form the instructions given to him, but he will, as far as practicable, assist applicants by giving them information and directions as to the course which they must pursue.

15. A receipt or acknowledgment of each application will be handed to the applicant, and the production of such receipt will be required of the person who attends to obtain the grant when completed.

16. No clerk or officer of the District Registry is to become surety to any administration bond.

17. All administration bonds in cases of personal applications are to be executed in the District Registry making the grant, or in some other Registry belonging to the Court of Probate, unless otherwise permitted by the District Registrar.

(A.)—AN ACCOUNT OF THE PERSONAL ESTATE AND EFFECTS
OF
DECEASED (a).

(No deductions to be made on account of debts owing by deceased.)

	Price of Stocks.	Actual Value.
		£ s. d.
Cash in the house and at the bankers		
Household goods, linen, wearing apparel, books, plate, jewels, carriages, horses, &c. valued at		
Stocks or funds of Great Britain transferable at the Bank or elsewhere in England, viz.:—		
Dividends thereon		

(a) As this schedule is, with one exception, identical with that issued from the Principal Registry, it is not repeated.

SCHEDULE (A).—*continued.*Personal Appli-
cations.

	Price of Stocks.	Actual Value.
		£ s. d.
Foreign stocks or funds transferable in Eng- land, viz.:—		
Dividends thereon		
Leasehold property:—		
Value per annum		
Ground rent on do. per annum ..		
Length of unexpired term		
Rents of real or leasehold property due at the death of the deceased		
Do. of leasehold property due since the death of the deceased		
Policy of insurance on life (b)		
Proprietary shares or debentures of public companies, viz.:—		
Dividends or interest thereon		
Money out on mortgage and other securities ..		
Interest thereon		
Book debts		
Bonds and bills		
Notes		
Interest thereon		
Real estate <i>contracted</i> to be sold		
Personal estate and effects left by the will under some authority enabling the deceased to dispose of the same as he or she might think fit		
Stock in trade, farming stock, and implements of husbandry valued at		
Other personal property not comprised under the foregoing heads, viz.:—		

(b) This item is omitted in the schedule issued from the Principal Registry.

IN HER MAJESTY'S COURT OF PROBATE.

DEBTORS ACT, 1869.

Rules for regulating the Practice under and carrying into effect the First Part of the said Act.

IN pursuance of the "Debtors Act, 1869," it is ordered that, on and after the date mentioned at the foot of these rules, the following rules shall be in force for regulating the practice under and carrying into effect the first part of the said "Debtors Act, 1869."

1. All applications to commit to prison under section 5 shall in the first instance be made by summons before the Judge, which shall specify the date and other particulars of the order for nonpayment of which the application is made, together with the amount due, and be endorsed with the name and place of abode or office of business of the proctor or attorney actually suing out the summons, and in case such attorney shall not be an attorney of this Court then also with the name and place of abode or office of business of the attorney in whose name such summons shall be taken out, and when the attorney actually suing out such summons shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be endorsed upon the said summons, and in case no attorney shall be employed to issue the summons then it shall be endorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

2. The service of the summons, wherever it may be practicable, shall be personal; but if it appear to the Judge that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service, an order may be made as if personal service had been effected upon such terms as to the Judge may seem fit.

3. Proof of the means of the debtor shall, whenever practicable, be given by affidavit, but if it appear to the Judge either before or at the hearing that a *vivâ voce* examination, either of the debtor or of any other person, or the production of any document, is necessary or expedient, an order may be made commanding the attendance of any such person before the Judge at a time and place to be therein mentioned, for the purpose of being examined on oath touching the matter in question (or and) for the production of any such document, subject to such terms and conditions as to the Judge may seem fit. The

disobedience to any such order shall be deemed a contempt of Court, and punishable accordingly. Debtors Act, 1869.

4. The order of committal (which may be in the form A. in the schedule, or to the like effect) shall, before delivery to the sheriff, be endorsed with the particulars required by Rule 1 of these rules. Concurrent orders may be issued for execution in different counties. The sheriff shall be entitled to the same fees in respect thereof as are now payable upon a ca. sa.

5. Upon payment of the sum or sums mentioned in the order (including the sheriff's fees in like manner as upon a ca. sa.), the debtor shall be entitled to a certificate in the form B. in the schedule, or to the like effect, signed by the proctor or attorney in the cause of the plaintiff or defendant, as the case may be, or signed by the plaintiff or defendant, as the case may be, and attested by an attorney or justice of the peace.

6. The sheriff or other officer named in an order of committal shall, within two days after the arrest, endorse on the order the true date of such arrest.

Dated this 17th day of February, 1870.

SCHEDULE.

A.

Upon hearing, &c. [*christian and surname of the debtor and party claiming*] I do order that the said A. B. be, for default of payment of the debt hereinafter mentioned, committed to prison for the term of weeks from the date of his arrest, including the day of such date, or until he shall pay £ , being the amount of [*here state the particulars of the debt or liability*], and which the said A. B. was on the day of ordered by the Court of Probate to pay to the said [*or, into the Registry of the said Court*], together with £ for costs of this order, and sheriff's fees for the execution thereof, and I order that the sheriff of do take the said A. B. for the purpose aforesaid, if he shall be found within his bailiwick.

Dated, &c.

B.

I certify that A. B., now in the gaol of , upon an order of the Judge of Her Majesty's Court of Probate, at the suit of C. D., for nonpayment of a debt of , has satisfied the said debt, together with the costs mentioned in the said order.

Dated, &c.

E. F., of, &c.,

Proctor or attorney for the said C. D.,

or

C. D., of, &c.

Witness to the signature of C. D.,

G. H., his attorney,

or

I. K., justice of the peace for .

Dated this 17th day of February, 1870.

(Signed) PENZANCE.

Approved.

(Signed) HATHERLEY, C.

A. E. COCKBURN, Ch. J.

RULES AND ORDERS

FOR REGULATING THE

PRACTICE OF THE COUNTY COURTS,

In Proceedings taken under the Provisions of the Act 20 & 21 Vict. c. 77, for amending the Law relating to Probate and Letters of Administration in England.

1. Any person desirous of taking proceedings in any county court under the statute 20 & 21 Vict. c. 77, for amending the law relating to probates and letters of administration in England, shall lodge with the Registrar of the Court having jurisdiction in the matter an application in writing according to Form A, annexed, duly stamped with the proper duty thereon (a), and at the same time lodge with the Registrar an office copy of the minute of the Court of Probate authorizing such application.

2. Where any person shall have lodged a caveat against the grant of probate or letters of administration, and proceedings are proposed to be taken in a county court, the person who shall have applied for the probate or letters of administration shall be deemed the plaintiff in the proceedings, and the person who shall have lodged the caveat shall be deemed the defendant.

3. The party making application to a county court for the revocation of probate or letters of administration, shall be deemed the plaintiff in the proceedings, and the party against whom the application is made shall be deemed the defendant.

4. Where an application shall be made to a county court for the grant or revocation of probate or letters of administration, the Registrar shall issue a notice to the defendant according to Form B, annexed, and deliver a notice, according to such form, then and there to the plaintiff or his agent.

5. The above-mentioned notices shall be issued ten clear days before the day on which the Judge shall proceed to make a decree in the matter.

6. Notices shall be served by a bailiff of the court, by his delivering the same to some person at the respective places of residence of the parties, as mentioned in the application for proceedings to be taken.

7. The Registrar of the county court, at the time that he issues the notices in proceedings for the revocation of the grant of probate or letters of administration, shall give notice by post, according to Form C, annexed, to the District Registrar by whom the probate or letters of administration has been granted, to produce the original will or other necessary documents at the county court at which the matter of the application will be considered.

(a) The stamps to be used in the county courts under the act 20 & 21 Vict. c. 77, can be obtained of the different local distributors of stamps.

8. The certificate to be given by the registrar of a county court under sect. 55 of 20 & 21 Vict. c. 77, shall be according to Form D, annexed; and on or before the day mentioned in the notice, the plaintiff shall deliver to the Registrar such form, stamped with the proper duty thereon, and the cause shall not proceed until such form duly stamped is so delivered: provided that the defendant may procure and deliver such form duly stamped, if the plaintiff shall have neglected to deliver such form so stamped.

9. Upon the day mentioned in the notice the Judge, whether both parties are then before him or not, may proceed to consider the matter of the application, and to make a decree thereon, or he may adjourn the proceedings from time to time as he may think fit.

10. The decree shall be according to Form E, annexed, and a copy of such decree shall be sent by post to the plaintiff and defendant.

11. Where application for probate or letters of administration has been made at the Principal Registry, and any contentious matter shall arise out of such application, and the Judge of the Court of Probate shall send the cause to a county court, the Registrar, upon the receipt of such cause, shall forthwith issue a notice, according to Form B, in the schedule, both to the plaintiff and defendant, without any application being made to the Court by the plaintiff.

12. In proceedings for which rules and orders are not hereby provided the rules and practice of the Court of Probate shall be followed so far as they are applicable.

13. The enactments, practice and forms in force and used in the county courts shall, subject to the foregoing rules and orders, be adopted with reference to proceedings in the county courts in matters of probate or letters of administration, so far as the same are applicable, *mutatis mutandis*.

In pursuance of the powers vested in us by the appointment of the Lord Chancellor under the provisions of the statute 19 & 20 Vict. c. 108, we, James Manning, John Herbert Koe, Edward Cooke, John Worlledge and William Furner, have, under the provisions of the statute 20 & 21 Vict. c. 77, framed the above rules and orders, and we do hereby certify the same to the Lord Chancellor accordingly.

JAMES MANNING.
JOHN HERBERT KOE.
EDWARD COOKE.

JOHN WORLEDGE.
WILLIAM FURNER.

I approve of the above to come into force on the 4th day of
February, 1858.

CRANWORTH, C.

For Forms used in the County Court, see Appendix II., and for fees and costs therein, see Appendix III.

B.

H H

DIRECTIONS

*For describing Testators, Intestates and Parties applying
for Grants.*

Directions.

1. As a general rule adopt the signature of a testator as his name, although it differ from the name as written in the heading of the will.

2. In case of a variance between the name of the testator in the heading of the will, and the name as signed at the foot or end of it, and in case the former is the more correct, the testator should be described by the name he signs, the word "otherwise" followed by the name given him in the will being added.

3. If the testator's name is wrongly spelt in the will, and he signs his will by his initials or by a mark, he should be described by his correct name, the word "otherwise" followed by the name written in the will being added.

4. If the testator is described in the will as "the elder," but does not so subscribe himself, such description is not to be inserted.

5. If the testator is described in the will as "the younger," but does not so subscribe himself, he should, notwithstanding, be described as "the younger," or "*heretofore* the younger," as the case may be.

6. The testator's last place of residence as stated in the will or codicil should form part of his description, and any previous or subsequent residence may be added, provided that not more than three places of residence be inserted.

7. When there is but one executor or executrix named in the will, he or she should be described in the probate as "the sole executor" or "the sole executrix."

8. When there are more executors than one, if they are all females, they are to be described as "the executrices." If they are all males, or partly males and partly females, they are to be described as "the executors." The expressions "joint executors" and "executor and executrix" should not be used.

9. If the name of an executor or executrix is mis-spelt in the will, the words "in the will written" should be added to his or her correct name, and if the two names be identical in sound, no proof of identity is required.

10. If an executor be wrongly described in the will as "the elder," or "the younger," or by a wrong christian name, an affidavit is requisite in proof of the identity of the person intended to be named in the will with the executor applying for the grant, or to whom power to apply is to be reserved in the grant.

11. Whenever it appears from the contents of the will that an executor or executrix is related to the testator as father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, great uncle, great aunt, nephew, niece, great nephew, great niece, he or she is to be so described in the probate.

12. Administrators are to be described as follows:—

A husband as "the lawful husband."

A wife .. "the lawful widow and relict."

A father .. "the natural and lawful father."

A mother .. "the natural and lawful mother" and
"next of kin."

A child .. "the natural and lawful and only child,"
or "one of the natural and lawful
children."

A brother .. "the natural and lawful brother."

A sister .. "the natural and lawful sister."

If there be no parents living, the
brother or sister are further to be
described as "one of the next of
kin," or the "only next of kin."

A nephew .. "the lawful nephew," { and "one of the"
or

A niece .. "the lawful niece," { "only next of kin."

If a brother or sister should be
living, and the nephew or niece
being the child of the intestate's
brother or sister who died in his
lifetime takes the letters of adminis-
tration, he or she is to be described
as "one of the parties entitled in
distribution."

Grandparents, grandchildren, cousins, &c., are to be
described as "lawful."

RULES AND ORDERS

FOR HER MAJESTY'S COURT OF PROBATE,

*Made under the Provisions of the Statutes 20 & 21 Vict. c. 77,
and 21 & 22 Vict. c. 95,*

IN RESPECT OF

CONTENTIOUS BUSINESS.

Contentious
Business.

Commencement
of.

1. All rules and orders heretofore made and issued in respect of CONTENTIOUS business shall be repealed on and after the 1st day of September, 1862, except so far as concerns any matters or things done in accordance with them prior to the said day.

2. The following rules and orders in respect of contentious business shall take effect on and after the 1st day of September, 1862.

CONTENTIOUS BUSINESS.

3. All proceedings in the Court of Probate or in the Registries thereof in respect of business not included in the Court of Probate Act, 1857, under the expression "common form business," except the warning of caveats, shall be deemed to be contentious business.

Parties to Causes.

4. Executors or other parties who, previously to the passing of the Court of Probate Act, 1857, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities, and effect, as heretofore.

5. Next of kin and others who, previously to the passing of the said act, had a right to put executors or parties entitled to administration with will annexed upon proof of a will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs, as heretofore.

6. Parties who previously to the passing of the said act had a right to intervene in a cause may do so, with leave of the Judge or one of the Registrars, obtained by order on summons, subject to the same limitations and the same rules with respect to costs as heretofore.

Caveats.

7. Caveats may be entered in the Principal Registry of the Court of Probate or in a District Registry thereof; if in the

Principal Registry the person entering the caveat must insert the name of the deceased in the index to the caveat book.

Contentious
Business.

8. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months, and then expire and be of no effect, but may be renewed from time to time.

Caveats.

9. Caveats shall be warned from the Principal Registry. The warning is to be served by leaving the same or a true copy thereof at the place mentioned in the caveat as the address of the person who entered it.

10. It shall be sufficient for the warning of a caveat that a Registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

11. The warning to a caveat is to state the name and interest of the party on whose behalf the same is issued, and if such person claims under a will or codicil, is also to state the date of such will or codicil, and must be accompanied by an address within three miles of the General Post Office at which any notice requiring service may be left. The form of warning will be supplied in the Registry.

12. Upon an appearance being entered in answer to the warning of a caveat, the matter shall be entered as a cause in the court book, and the contentious business shall thereupon be held to commence, and the expenses of the entry of such caveat and the warning thereof shall, upon taxation, be considered as costs in the cause.

Citations.

13. Citations can only be extracted from the Principal Registry, and no citation is to issue under seal until an affidavit in verification of the averments it contains has been filed in the Registry.

14. When a party proposes to prove a will or codicil in solemn form of law, and no caveat has been entered, or a caveat has been entered and no appearance given to the warning thereof, the contentious business shall be held to commence with the extracting of a citation in the Forms Nos. 1 and 2, or in some similar form.

15. Before a citation is signed by the Registrar a caveat shall be entered against any grant being made in respect of the estate and effects of the deceased to which such citation relates, and notice thereof shall be sent to the Registrar of any district in which the deceased appears to have had a residence at the time of his death. Such caveat is to be renewed from time to time, so as to be kept in force so long as the proceedings arising from the service of the citation are pending. This rule is not to apply to citations to exhibit an inventory, and to render an account, nor to citations to show cause why a bond should not be assigned in order to its being enforced against the sureties.

Contentious
Business.
Citations.

16. Citations to see proceedings may be extracted from the Registry, on the application of any party to the cause. A form is given, No. 4.

17. Every citation shall be written or printed on parchment, and the party extracting the same, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, a form of which is given, marked No. 5, to the Registry, and there deposit the præcipe, and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post Office.

18. Citations may be served personally when that can be done, the party cited being resident in Great Britain or Ireland, but if personal service cannot be effected the direction of the Judge or Registrars as to the mode of service must be obtained. Personal service shall be effected by leaving a true copy of the citation with the party cited, and showing such party the original, if required by him so to do.

19. Citations may be served upon parties resident out of Great Britain and Ireland by the insertion of the same or of an abstract thereof, settled and signed by one of the Registrars, as an advertisement, in such of the morning and evening London newspapers, and if necessary in such local newspapers, and at such intervals as the Judge or a Registrar may direct: provided that in any case the Judge or a Registrar may direct a citation to be served personally. If the party cited be abroad, having an agent resident in England, such agent must be served with a true copy of the citation.

20. Before a party can proceed after the service of a citation, an appearance must have been entered by or on behalf of the party cited, or an affidavit of personal service, and of non-appearance, must, together with the citation, have been filed in the Registry, or if personal service has not been duly effected, the order of the Judge, or of one of the Registrars in his absence, founded on an affidavit, and giving leave to proceed, must have been obtained. In case the citation has been advertised, the newspapers containing the advertisement, together with the citation and an affidavit of non-appearance, must be filed in the Registry.

21. The above rules, so far as they relate to the service of citations, are to apply to the service of all other instruments requiring personal service.

22. If contentious proceedings arise from the service of a citation, the expense of the citation and service thereof shall, upon taxation, be considered as costs in the cause.

Suits in Formâ Pauperis.

23. Any person desirous of prosecuting a suit in formâ pauperis is to lay a case before counsel, and obtain an opinion that he or she has reasonable grounds for proceeding.

24. No person shall be admitted to prosecute a suit in formâ pauperis without the order of the Judge; and to obtain such order, the case laid before counsel, and his opinion thereon, with an affidavit of the party, or of his or her proctor, solicitor or attorney that the said case contains a full and true statement of all the material facts, to the best of his or her knowledge and belief, and an affidavit by the party applying that he or she is not worth 25*l.* after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made.

Contentious
Business.

Suits in formâ
pauperis.

25. Where a pauper omits to proceed to trial, pursuant to notice, he or she may be called upon by summons to show cause why he or she should not pay costs, though he or she has not been dispaupered, and why all future proceedings should not be stayed until such costs are paid.

Appearances.

26. All appearances are to be entered in the Principal Registry in a book provided for the purpose, and kept by the clerk of the papers. The entry must set forth the interest which the person on whose behalf it is entered has in the estate and effects of the deceased.

27. The entry of the appearance of a party shall be accompanied by an address within three miles of the General Post Office.

Service of Pleadings, &c.

28. It shall be sufficient to leave all pleadings and other instruments, personal service of which is not expressly required by these rules and orders, at the address furnished as aforesaid by the plaintiff and defendant respectively.

Default.

29. In case the party cited does not appear within the time limited in the citation, the cause shall proceed in default; nevertheless, the party cited may enter an appearance at any time before a proceeding has been taken in default, or afterwards by leave of the Judge or of one of the Registrars.

Affidavits as to Scripts.

30. In testamentary causes the plaintiff and defendant, within eight days of the entry of an appearance on the part of the defendant, are respectively to file their affidavits as to scripts, whether they have or have not any script in their possession. A Form, No. 10, is given.

31. Every script which has at any time been made by or under the direction of the testator, whether a will, codicil, draft of a will or codicil, or written instructions for the same,

Contentious
Business.

Affidavits as to
scripts.

of which the deponent has any knowledge, is to be specified in his affidavit of scripts ; and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith in the registry.

32. No party to the cause, nor his proctor, solicitor, or attorney, shall be at liberty, except by leave of the Judge, or of one of the Registrars of the Principal Registry, to inspect the affidavit as to scripts, or the scripts annexed thereto, filed by any other party to the cause, until his own affidavit as to scripts shall have been filed.

The Declaration.

33. In ordinary cases it belongs to the plaintiff to deliver the declaration, and to the defendant to deliver the plea ; but the party propounding the alleged last will and testament of the deceased shall, in all cases, even if defendant in the suit, deliver the declaration, and the party opposing the same deliver the plea.

34. The declaration is to be delivered to the opposite party, and a copy thereof filed in the Registry on one and the same day, and within one month from the entry of appearance by the defendant ; but the party whose duty it is to bring in the declaration shall not be compelled to deliver it, or to file a copy thereof, until the expiration of eight days after the other party has filed his affidavit as to scripts.

35. In case of proving a will in solemn form of law, the party whose duty it is shall declare in the Form No. 6, or as near thereto as the circumstances of the case admit.

36. In case of proceedings in default, the plaintiff shall file his declaration in the Registry within eight days from the last day allowed in the citation for the appearance of the defendant.

Interest of Party opposing Will.

37. In a testamentary cause after delivery of the declaration the interest of the party to whom it has been delivered cannot be disputed by the party declaring, except by leave of the Judge.

The Plea.

38. A party desirous of pleading, must deliver his plea to the other party within eight days after the service of the declaration, and file a copy thereof in the Registry on one and the same day, otherwise he will not be permitted to plead, except with the permission of the Judge, or of the Registrars of the Principal Registry in the absence of the Judge. A form of plea is given, No. 8.

Further Pleadings.

39. Either of the parties may, within eight days of the service upon him of the last previous pleading, give in a replica-

tion, rejoinder, sur-rejoinder, rebutter, or demurrer, as he may be advised. The form of the declaration and plea will, it is presumed, be a sufficient guide as to the form of any further pleadings.

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Further pleadings.

General Rules as to Pleadings.

40. *If one party propound a will in his declaration, and the other party in his plea allege the existence of another will, each party may, with and subject to the permission of the Judge, adduce proof at the trial or hearing of the cause of the validity of the will upon which he relies.*

Repealed by the
Amended Rule,
11th January,
1866.

In place of Rule 40 of the Rules and Orders in Contentious Business, and of the Form No. 8 referred to in Rule 38 of the said rules and orders, it is ordered, that—

Made 11th Janu-
ary, 1866.

40. If one party propounds a will or testamentary script in his declaration, and the adverse parties, or either of them, desire to propound another will or testamentary script, the adverse parties must, with their pleas, deliver to the opposite party and file in the Registry a declaration propounding such other will or testamentary script, to which the opposite party shall plead; and the form of declaration, and the pleadings and proceedings arising therefrom, shall be the same as are directed by the rules and orders of this Court in respect to the original declaration delivered and filed in the cause.

40a. The party or parties pleading to a declaration propounding a will or testamentary script shall be allowed to plead only the pleas hereunder set forth, unless by leave of the Judge, to be obtained on summons.

1. That the paper writing bearing date, &c., and alleged by the plaintiff [*or* defendant] to be the last will and testament [*or* codicil to the last will and testament] of A. B., late of, &c., deceased, was not duly executed according to the provisions of the statute 1 Vict. c. 26, in manner and form as alleged.
2. That A. B. the deceased in this cause, at the time his alleged will [*or* codicil] bears date, to wit, on the, &c., was not of sound mind, memory, and understanding.
3. That the execution of the said alleged will [*or* codicil] was obtained by the undue influence of C. D. and others acting with him.
4. That the execution of the said alleged will [*or* codicil] was obtained by the fraud of C. D. and others acting with him.
5. That the deceased at the time of the execution of the said alleged will [*or* codicil] did not know and approve of the contents thereof.

Any party pleading the last of the above pleas shall therewith (unless otherwise ordered by the Judge) deliver to the

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adverse parties and file in the Registry particulars in writing, stating shortly the substance of the case he intends to set up thereunder ; and no defence shall be available thereunder which might have been raised under any other of the said pleas, unless such other plea be pleaded therewith.

41. In all cases the party opposing a will may, with his plea, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Prerogative Court.

42. Either party desiring to alter or amend a pleading must apply to the Court upon motion ; but if the alteration or amendment required be merely verbal or in the nature of a clerical error it may be made by order upon summons.

43. When a pleading has been ordered to be altered or amended, the time for filing the next pleading shall commence from the time of the order having been complied with.

44. If a party in any cause fail to deliver, or file a copy of the declaration, plea, or other pleading within the time specified in these rules, or within such extended time as may have been allowed, the party to whom such declaration, plea, or other pleading ought to have been delivered shall not be bound to receive it, and the copy of such declaration, plea, or other pleading shall not be filed, unless by direction of the Judge, or by order of the Registrars of the Principal Registry, obtained on summons. The expense of every application for such direction or order shall fall on the party who has caused the delay, unless the Judge or Registrars shall otherwise direct.

45. When in any cause a conditional order is made, the party entitled to proceed in default must, before he can take the next step, obtain an order of the Registrars, or, if required, an order of the Judge upon summons, or on motion in Court.

The Issue.

46. Within fourteen days after the delivery of the last pleading in the cause, the party who brought in the declaration is to deliver to the other parties in the cause the issue in the Form No. 11, or in a form as near thereto as the circumstances of the case will admit, but the issue is not to be filed.

The Mode of Trial.

47. The party who delivers the issue shall therewith give notice to the other parties to the cause, that, after the expiration of eight days, he intends on a day to be specified in the notice to apply to the Court to try the questions at issue before

itself, either with or without a jury, or to direct an issue to be tried before a Judge of assize, as the case may be; and if he do not give such notice with the issue, or within sixteen days from the day on which the issue was delivered, the other party may give a similar notice to him. A form of notice, No. 12, is subjoined.

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The mode of trial.

48. A copy of every such notice shall be filed in the Registry with the case for motion as to mode of trial.

49. In each case the Judge shall, after hearing the parties upon motion in Court, direct in what mode the cause shall be tried or heard.

The Record.

50. After the direction of the Judge has been obtained as to the mode in which the cause is to be tried or heard, the party who delivered the declaration shall, within eight days, deposit the record of the cause in the Registry. The record is to conclude with a statement of the mode in which the Judge has directed the cause to be tried or heard, as in the Form No. 13.

51. In default of the appearance of defendants, being parties cited, a record, as in Form No. 14, or as near thereto as can be, shall be deposited in the Registry.

Trial by Jury.

52. If the cause be directed to be tried by a jury, the questions at issue between the parties are to be prepared by the party declaring from the record, and settled by one of the Registrars of the Principal Registry. A form is given, No. 15, and a copy of such questions so settled is to be served on all the other parties to the cause.

53. After the questions have been so settled, any party in the cause shall be at liberty to apply to the Judge on summons to alter or amend the same, and his decision shall be final and binding on the parties.

Setting down the Cause for Trial or Hearing.

54. The party who has deposited the record shall set down the cause for trial or hearing, and upon the day on which he so sets it down shall give notice of his having done so to each party for whom an appearance has been entered; but if he delay setting down the cause for trial or hearing for the space of one month after the Court has directed the mode in which the questions at issue shall be tried or heard, either of the other parties may set the cause down for trial or hearing, and give a similar notice. A copy of every such notice shall be filed in the Registry; and the cause, unless the Judge shall otherwise direct, shall come on in its turn.

55. No cause is to be called on for trial or hearing until after the expiration of ten days from the day when the same has been

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Setting down
cause.

set down for trial or hearing, and notice thereof has been given, save with the written consent of all parties to the suit, previously filed in the Registry.

Demurrer.

56. All demurrers are to be set down for hearing in the same manner as causes, and will come on in their turn with other causes to be heard by the Judge without a jury.

The Hearing.

57. The hearing of the cause shall be conducted in Court, and the counsel shall address the Court, subject to the same rules and regulations as now obtain in the Courts of Common Law.

58. After the conclusion of the trial or hearing, the Registrar shall enter on the record the finding of the jury, or the decision of the Judge, in a form corresponding as near as may be with those given, Nos. 25 and 26, and shall sign the same.

New Trial.

59. An application for a new trial of an issue tried before a jury may be made to the Court by motion within fourteen days from the day on which the issue was tried if the Court be then sitting, if not, on the first motion day after the expiration of the fourteen days.

60. An application for a re-hearing of a cause heard before the Judge without a jury, and in which evidence has been given *vivâ voce*, may be made by motion within fourteen days from the day on which the same was heard, if the Court be then sitting, if not, on the first motion day after the expiration of the fourteen days.

Interest Causes.

61. In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the Judge, adduce proof on one and the same trial of their interests respectively.

62. In interest causes the pleading of each party must show on the face of it that no other person exists having a prior interest to that of the claimant.

63. Forms of the declaration and plea in an interest cause are given, No. 7 and No. 9.

Proceedings by Petition.

64. Any question arising in a cause, and not being one of interest, domicile, or other matter usually brought before the Court by declaration and plea, may be brought before the Court by petition.

65. The party desiring to proceed by petition is to give notice thereof in writing to all the other parties in the cause, and such notice is to set forth the question intended to be raised for the decision of the Court, and a copy of such notice is to be filed in the Registry.

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Proceedings by
petition.

66. In proceedings by petition the plaintiff shall, within eight days after he has given notice, deliver his petition to the defendant, and file a copy thereof in the Registry upon one and the same day.

67. The defendant shall, within eight days after the delivery of the petition, deliver his answer to the plaintiff, and file a copy thereof in the Registry upon one and the same day; and the same course shall be pursued with respect to the reply, rejoinder, &c. until the petition is concluded.

68. When the defendant raises the question to be heard by petition, and gives notice thereof to the plaintiff, the plaintiff shall, within eight days from the receipt of such notice, file a petition; otherwise the defendant shall be at liberty to do so.

69. Both plaintiff and defendant shall, within eight days from the day upon which the petition is concluded, file in the Registry such affidavits and other proofs as may be necessary in support of their several averments therein. A form of petition is given, No. 28.

70. After the time for filing the affidavits and other proofs has expired, the petitioner is to set down the petition for hearing in the same manner as a cause.

Subpœnas.

71. Every subpœna shall be written or printed on parchment, and may include the names of any number of witnesses. The party, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, to the Registry, and there get it signed and sealed, and deposit the præcipe. Forms are given, Nos. 16, 17, 18, and 19.

Admission of Documents.

72. Any party in a cause may call upon the other party or parties, by notice in writing in the form given, No. 20, to admit any document, saving any just exceptions; and in case of refusal or neglect to admit the same, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or hearing the Judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed as costs in the cause except in cases where the omission to give the notice was, in the opinion of the Registrar, a saving of expense.

Production of Wills, &c.

73. Applications for an order for the production of papers or writings purporting to be testamentary, may be made to the Judge, by motion or by summons when a suit is pending, and by motion upon affidavit when no suit is pending. If it can be shown that a testamentary paper is in the possession, within the power, or under the control of any person, a subpoena for the production of the same may be obtained by a Registrar's order, founded on an affidavit. Forms of subpoenas applicable to these cases are given, Nos. 21 and 22, and forms of *præcipe*, Nos. 23 and 24.

Guardians to Minors.

74. A minor may elect a guardian for the purpose of carrying on, defending, or intervening in a suit, in the same manner and subject to the same rules as in respect of non-contentious business, and without having such guardian assigned to him; but guardians are to be assigned to infants (under the age of seven years) for the above purposes by the Judge, or by an order of one of the Registrars, founded on an affidavit to the effect required for such assignment in non-contentious business.

Pencil writing on Will, &c.

75. When any pencil writing appears on a will, script, or other document filed in the Registry, a fac-simile copy of the will, script, or other document, or of the pages or sheets thereof, containing the pencil writing, must also be filed with those portions written in red ink which appear in pencil in the original. Such copy must be examined by an examiner in the Registry.

Inventories.

76. In contentious business, inventories, and not merely declarations of the personal estate and effects of the deceased, are to be filed, unless by order of the Judge or of a Registrar. The form of inventory is given, No. 27.

Notices.

77. All notices required by these rules, or by the practice of the Court, are to be in writing.

Real Estate.

78. Any person proceeding to prove a will in solemn form, or to revoke the probate of a will, may, if the will affects real estate, apply to the Judge, or to a Registrar in his absence, for an order authorizing him to cite the heir or heirs at law, or other person or persons having or pretending interest in such real estate, to see proceedings; and the Judge or Registrar, on being satisfied by affidavit that the will in question does affect

or purport to affect the real estate, will make an order authorizing the person applying to cite the heir or heirs at law or other such person or persons as aforesaid : provided always, that the Judge may give any special directions as to the persons to be cited which he may think the justice of the case requires.

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Real estate.

Receiver of Real Estate.

79. A receiver of real estate pending suit is to give bond in the form given, No. 29, or in a form as near thereto as the circumstances of the case will admit of, with two sureties, and in a penalty of such an amount as may be directed by the Judge.

Affidavits.

80. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every person making an affidavit is to be inserted therein.

81. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

82. No affidavit will be admitted in any matter depending in the Court of Probate any material part of which is written on an erasure, or in the jurat of which there is any interlineation or erasure.

83. When an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the Registrar, commissioner, or other person before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that such party made his or her mark thereto, or wrote his or her signature thereto, in the presence of the Registrar, commissioner, or other person before whom the affidavit was made.

84. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before the partner or clerk of his proctor, solicitor, or attorney.

85. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

86. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used in Court, unless by leave of the Judge.

Appeals.

87. Application for leave to appeal against any interlocutory decree or order of the Court of Probate, must be made within

Contentious
Business.
Appeals.

a month of the delivery of the decree or order appealed from, or within such extended time as the Judge shall direct, and notice of such application must be given to the party in whose favour such order or decree has been made, and filed in the registry. A form of notice is given, No. 29.

88. Parties may proceed to carry into effect the decision of the Court of Probate, notwithstanding any notice of appeal, or of application for leave to appeal, unless the Judge shall otherwise order; and the Judge may order the execution of his decree or order to be suspended, upon such terms as he sees fit.

Time fixed by these Rules.

89. The Judge shall in every case in which a time is fixed by these rules for the performance of any act have power to extend the same to such time, and with such qualifications and restrictions, and on such terms as to him may seem fit.

90. To prevent the time fixed for the performance of any act from expiring before application can be made to the Judge for an extension thereof, any one of the Registrars may, upon reasonable cause being shown, extend the time, provided that such time shall in no case be extended beyond the day upon which the Judge shall next sit in chambers, or in Court to hear motions.

91. The time fixed in these rules for bringing in pleadings and for other proceedings shall in all cases be exclusive of Sundays, Christmas day, and Good Friday.

Taxing Bills of Costs.

92. All bills of costs in contentious business are referred to the Registrars of the Principal Registry for taxation, and may be taxed by them without any special order for that purpose. Such bills are (unless by leave of the Judge or a Registrar) to be filed in the Registry two days at least before the day appointed for the taxation. An appointment for taxation will be made at the time of filing the bill.

93. The party who has obtained an appointment to tax his bill of costs shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at the same time deliver to him or them a copy of the bill to be taxed.

94. When an appointment has been made by a Registrar of the Principal Registry for taxing any bill of costs, and any of the parties to be heard on the taxation do not attend at the time appointed, the Registrar may nevertheless proceed to tax the bill, after the expiration of a quarter of an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed.

95. If more than one sixth is deducted from any bill of costs

taxed as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill.

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Business.

Accounts of Administrators and Receivers pending Suit.

96. Every administrator pendente lite and receiver of real estate shall exhibit an inventory and render an account of the property of the deceased which comes to his hands, and the accounts of every such administrator and receiver shall be referred to the Registrars of the Principal Registry for investigation and report, before the same are allowed by the Court, unless the Judge shall otherwise direct; and the foregoing rules and orders respecting the taxation of costs shall, so far as the same are applicable, be observed with respect to the investigation of such accounts, and any other accounts referred to the Registrars for examination.

Paying Money out of Court.

97. Persons applying for payment of money out of the Registry must give forty-eight hours' notice of such application to the clerk of the papers. Such notice is to be in writing, and to set forth the day on which the money applied for was paid into the Registry—the minute entered on receiving the same—the date and particulars of the order for payment to the applicant—and if the same be in payment of costs, the date of filing the bill for taxation and of the Registrar's certificate. During the summer vacation money can only be paid out on certain days, to be fixed by the Registrars, notice whereof will be given in the Registry.

SUMMONSES.

98. A summons may be taken out by any person in any matter, whether contentious or non-contentious, in which there is no rule or practice requiring a different mode of proceeding.

99. A printed form must be obtained and filled up with the object of the summons, and a proper fee stamp affixed. It must then be taken to the clerk of the papers, who will insert in the blank left in the printed form the time when the summons is to be made returnable, and get the summons signed by a Registrar.

100. The clerk of the papers is then to enter the name of the cause or matter and of the agent taking out the summons in the summons book, and return the summons (with the stamp cancelled), signed, to the applicant, who is to serve a copy on the party summoned. This copy must be served on the party summoned one clear day at least before the summons is returnable, and before 7 P.M. On Saturdays the copy of the summons is to be served before 2 P.M.

Contentious
Business.
Summonses.

101. On the day and at the hour named in the summons the party issuing the same is to present himself with the original at the Judge's chambers.

102. Both parties will be heard by the Judge, who will make such order as he may think fit, and a note of such order will be made by the Registrar in the summons book.

103. If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the Judge, who will thereupon make such order as he may think fit.

104. An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and har the party taking out the summons from the right to go before the Judge on that occasion.

105. If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the opposite party, must be filed in the Registry. An order will thereupon be drawn up, and delivered to the person filing such summons or copy. The clerk of the papers before giving out the order is to see that the proper stamp has been affixed to it, and is to cancel such stamp.

106. If a summons is brought to the clerk of the papers, with a consent to an order indorsed thereon, signed by the party summoned, or by his proctor, solicitor, or attorney, an order will be drawn up without the necessity of going before the Judge: provided that the order sought is in the opinion of the Registrars one which, under the circumstances, would be made by the Judge.

ADDITIONAL RULES AND ORDERS.

Writs of Attachment and other Writs.

Made 11th Janu-
ary, 1866.

107. Applications for writs of attachment, and also for writs of fieri facias and of sequestration, must be made to the Judge by motion in Court.

108. Such writs, when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the Registry, with an office copy of the order, and, when approved and signed by one of the Registrars, shall be sealed with the seal of the Court, and it shall not be necessary for the Judge to sign such writs.

109. Any person in custody under a writ of attachment may apply for his or her discharge to the Judge if the Court be then sitting; if not, then to one of the Registrars, who for good cause shown shall have power to order such discharge.

FORMS OF INSTRUMENTS

*To be adopted in the PRINCIPAL REGISTRY of the Court
of Probate, as nearly as the Circumstances of each
Case will allow.*

No. 1.—*Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December, 1837.*

Non-Contentious
Business.

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B., deceased.

I, C. D., of (1) make oath [or solemnly, sincerely and truly declare and affirm, *according to the form of words prescribed by the statute applicable to the particular case*], that I am one of the subscribing witnesses to the last will and testament [or codicil, *as the case may be*], of A. B., late of in the county of deceased, the said will [or codicil] being now hereunto annexed, bearing date and that the said testator executed the said will [or codicil] on the day of the date thereof, by signing his name at the foot or end thereof [or in the testimonium clause thereof, or in the attestation clause thereto, *or as the case may be*], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [or codicil] in the presence of the said testator.

(1) Insert the names, residence and title, or addition of the deponent.

N.B. If the signature is in the testimonium clause or attestation clause, insert "meaning and intending the same for his final signature to his will."

(Signed) C. D.
Sworn at on the day of 187 .
Before me,
[person authorized to administer
oaths under the act.]

No. 2.—*Affidavit for the Commissioners of Inland Revenue.—
For Executors.*

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B., deceased.

I, C. D., of (1) make oath [or solemnly, sincerely and truly declare and affirm, *according to the form of words prescribed by the statute applicable to the particular case*], that I am one of the executors [or the executor] named in the last will and testament (2) of A. B., late of deceased; that the said deceased died on the day of in the year of our Lord one thousand hundred and at (3) and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to

(1) Insert the names, residence and title, or addition of the deponent.

(2) Insert codicils, if any.

(3) Insert place of death, or set forth the reason why the same cannot be furnished.

Non-Contentious
Business.

N.B. Forms for the two leasehold clauses are to be printed on the back of the affidavit.

as a trustee for any other person or persons, and not beneficially (*if the deceased died on or after 3rd April, 1860, add, "but inclusive of all personal estate and effects which the said deceased, under any authority enabling him [or her] to dispose of the same, as he [or she] might think fit, has disposed of by his [or her] said will,"*) [*if any leaseholds insert clause No. 1, given below*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No. 2 given below*].

(Signed) C. D.
Sworn at on the day of 187 .
Before me,
[*person authorized to administer oaths under the act.*]

No. 2 a.—*Affidavit for the Commissioners of Inland Revenue.—
For Administrators with the Will annexed.*

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B., deceased.

(1) Insert the names, residence and title, or addition of the deponent.

(2) Insert codicils, if any.

(3) Insert the place of death, or set forth the reason why the same cannot be furnished.

I, C. D., of (1) the party applying for letters of administration with the will (2) annexed, of the personal estate and effects of A. B., late of deceased, make oath [*or solemnly, sincerely and truly declare and affirm, according to the form of words prescribed by the statute applicable to the particular case*] that the said deceased died on the day of one thousand hundred and at (3) and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration; with the said will (2) annexed, are to be granted exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially, (*if the deceased died on or after 3rd April, 1860, add "but inclusive of all personal estate and effects which the said deceased, under any authority enabling him [or her] to dispose of the same, as he [or she] might think fit, has disposed of by his [or her] said will,"*) [*if leaseholds insert clause No. 1 given below*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No. 2, given below*].

N.B. Forms for the two leasehold clauses are to be printed at the back of the affidavit.

(Signed) C. D.
Sworn at on the day of 187 .
Before me,
[*person authorized to administer oaths under the act.*]

Form of Leasehold Clause No. 1.

"Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives."

Form of Leasehold Clause No. 2.

"And I [*or we*] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, either absolute or determinable on a life or lives, to the best of my [*or our*] knowledge, information and belief.

No. 2 b.—*Affidavit for the Commissioners of Inland Revenue.—
For Administrators.*

Non-Contentious
Business.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

I, C. D., of ⁽¹⁾ the party applying for letters of administration of the personal estate and effects of A. B., late of make oath [or solemnly, sincerely and truly declare and affirm, *according to the form of words prescribed by the statute applicable to the particular case*] that the said deceased died on the day of one thousand hundred and at ⁽²⁾ and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [if leaseholds insert *Clause No. 1 given before*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [if no leaseholds insert *clause No. 2 given before*].

(1) Insert the names, residence, title, or addition of the deponent.

N.B. Forms for the two leasehold clauses are to be printed at the back of the affidavit.

(2) Insert place of death, or set forth the reason why the same cannot be furnished.

Sworn at on the day of 187 . C. D.
Before me,
[person authorized to administer
oaths under the act.]

No. 3.—*Oath for an Executor.*

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

I, C. D., of in the county of make oath and say * [or solemnly, sincerely and truly declare and affirm, *according to the form of words prescribed in the statute applicable to the particular case*], that I believe the paper writing [or the paper writings] hereto annexed and marked by me to contain the true and original last will and testament [or last will and testament with codicils] of A. B., late of in the county of deceased, and that I am the sole executor [or one of the executors] therein named [or executor according to the tenor thereof, executor during life, executrix during widowhood, or as the case may be], and that I will well and faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [or will and codicils] so far as the same shall thereto extend and the law bind me; that I will exhibit a true and perfect inventory of all and singular the said estate and effects and render a just and true account thereof, whenever required by law so to do; that the testator died at in the county of on the day of 187 ; and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

Insert the names, residence and title or addition of the deponent, and relationship, if any, of the executor to the testator.

Each testamentary paper is to be marked by the persons sworn and the person administering the oath.

When several executors are appointed, and some or one of them only sworn, a memorandum should be made in the margin of the oath that power is to be reserved to the other executors, or that they have renounced.

Sworn at on the day of 187 . C. D.
Before me,
[person authorized to administer
oaths under the act.]

Non-Contentious
Business.

No. 4.—Oath for Administrator with the Will.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

Insert the names, residence and title, or addition of the deponent.

Each testamentary paper is to be marked by the persons sworn and the person administering the oath.

I, C. D., of _____ in the county of _____ make oath and say [or solemnly, sincerely and truly declare and affirm, *according to the form of words prescribed by the statute applicable to the particular case*], that I believe the paper writing [or the paper writings] hereunto annexed and marked by me to contain the true and original last will and testament [or the last will and testament with codicils] of A. B., late of _____ in the county of _____ deceased, and that E. F. [insert his relationship, if any, to the deceased], the sole executor therein named, survived the said deceased, and is since dead without having taken probate thereof [or as the fact may be], and that I am the [insert the relationship to deceased, if any] residuary legatee in trust named therein [or as the fact may be], and that I will well and faithfully administer the personal estate and effects of the said deceased by paying his just debts and the legacies contained in his will [or will and codicils], and distributing the residue of his estate according to law; that I will exhibit a true and perfect inventory of all and singular the said personal estate and effects, and render a just and true account thereof, whenever required by law so to do; that the testator died at on the _____ day of _____ 187____; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of _____ pounds, to the best of my knowledge, information and belief.

(Signed) C. D.
Sworn at _____ on the _____ day of _____ 187____.

Before me,
[person authorized to administer oaths under the act.]

. No. 5.—Oath for Administrators.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

Insert the names, residence and title or addition of the deponent.

In all cases where applicable, add "only next of kin," or "one of the next of kin."

I, C. D., of _____ in the county of _____ make oath and say [or solemnly, sincerely, and truly declare and affirm, *according to the form of words prescribed by the statute applicable to the particular case*], that A. B., late of _____ deceased died intestate, a bachelor, without parent, brother, or sister, uncle or aunt, nephew or niece [or as the case may be], and that I am the lawful consin german [or as the case may be] and one of the next of kin [or only next of kin of the said deceased, as the case may be]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his said estate and effects according to law; that I will exhibit a true and perfect inventory of all and singular the said estate and effects, and render a just and true account thereof, whenever required by law so to do; that the said deceased died at _____ on the _____ day of _____ 187____; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of _____ pounds, to the best of my knowledge, information, and belief.

(Signed) A. B.
Sworn at _____ on the _____ day of _____ 187____.

Before me,
[person authorized to administer oaths under the act.]

No. 6.—*Probate.*

Non-Contentious
Business.

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 187 the last will and testament [*or the last will and testament with codicils*] hereunto annexed of A. B., late of deceased, who died on at was proved and registered in the said Principal Registry of her Majesty's Court of Probate, and that administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid Court to C. D., the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or will and codicils*], and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

Extracted by

Sworn under
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(Signed) E. F.,
(L.S.) Registrar.

No. 7.—*Letters of Administration with the Will annexed.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., late of in the county of deceased, who died on the day of at made and duly executed his last will and testament [*or will and codicils thereto*] and did therein name [*or did not therein name any*] executor [*or as the case may be*]. And be it further known, that on the day of 187 , letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [*insert the character in which the grant is taken*], he having been first sworn well and faithfully to administer the same by paying the just debts of the said deceased, and the legacies contained in his will [*or will and codicils*] and distributing the residue of his estate according to law, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do.

Extracted by

Sworn under
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(Signed) E. F.,
(L.S.) Registrar.

No. 8.—*Letters of Administration.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 187 letters of administration of all and singular the personal estate and effects of A. B., late of deceased, who died on 187 at intestate, were granted by her Majesty's Court of Probate to C. D., the lawful widow and relict [*or as the case may be*] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying the just debts of the said intestate, and distributing the residue of his estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

Extracted by

Sworn under
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(Signed) E. F.,
(L.S.) Registrar.

Non-Contentious
Business.

No. 9.—*Double Probate.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 187 the last will and testament [*or* the last will and testament with codicils] hereunto annexed, of A. B., late of deceased, who died on at was proved and registered in the Principal Registry of her Majesty's Court of Probate, and that administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid Court to C. D., one of the executors named in the said will [*or* codicil], he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in his will [*or* will and codicils], and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will. And be it further known, that on the day of 187 the said will of the said deceased was also proved in the said Principal Registry, and that the like administration of all and singular the personal estate and effects of the said deceased, was granted by the aforesaid court to the said E. F., he having been first duly sworn well and faithfully to administer the same, by paying the just debts of the said deceased and the legacies contained in his will [*or* will and codicils] and to exhibit a true and perfect inventory of all and singular the said estate and effects of the said deceased, and to render a just and true account thereof whenever required by law so to do.

Sworn under
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Extracted by

Former grant, Jan. 18 ,
under the same sum.

(Signed) G. H.,
(L.S.) Registrar.

No. 10.—*Exemplification of Probate or of Letters of Administration with Will annexed.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that upon search being made in the Principal Registry of her Majesty's Court of Probate, it appears that on the day of in the year of our Lord 187 the last will and testament with codicils of A. B., late of deceased, who died at on or about 187 , was proved by C. D., the executor named therein [*or* letters of administration with the last will and testament and codicils annexed of the personal estate and effects of A. B., late of, &c., were granted to C. D., as the] and which probate [*or* letters of administration] now remain of record in the said registry. The true tenor of the said probate [*or* letters of administration with the will annexed, *as the case may be*] is in the words following, to wit:

Sworn under
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Extracted by

[*Here follow the will, codicils, and such affidavits as are registered.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and the sealing of these presents, this day of in the year of our Lord 187 .

(Signed) E. F.,
(L.S.) Registrar.

No. 11.—*Exemplification of Administration.*

Non-Contentious
Business.

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that upon search being made in the Principal Registry of her Majesty's Court of Probate, it appears that on the day of in the year of our Lord 187 letters of administration of all and singular the personal estate and effects of A. B., late of who died at on or about were granted to C. D., the [or one of the] of the said deceased, and which letters of administration now remain of record in the said Registry. The true tenor of the said letters of administration is in the words following, to wit :

Extracted by

Sworn under
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[Here the letters of administration are to be recited verbatim.]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and sealing of these presents, this day of in the year of our Lord 187 .

(L.S.) (Signed) E. F.,
Registrar.

No. 12.—*Special Administration with the Will of a Married Woman annexed.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., wife of C. B., late of in the county of died on the day of 187 at having during her coverture with the said C. B., by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 187 and of all other powers and authorities her enabling, made and executed her last will and testament bearing date the day of 187 with a codicil thereto, bearing date the day of 187 [or as the case may be], and thereof appointed her said husband, the said C. B., sole executor, and that the said C. B., as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And be it also known, that on the day of 187 letters of administration with the said will and codicil annexed of all and singular the personal estate and effects of the said deceased were granted and committed by her Majesty's Court of Probate to the said C. B., he having been first sworn well and faithfully to administer the same, by paying the just debts of the said deceased, and the legacies contained in her will and codicil, and distributing the residue of her estate according to law, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just and true account thereof whenever required by law so to do.

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(L.S.) (Signed) J. S.,
Registrar.

No. 13.—*Limited Probate of a Married Woman's Will.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., wife of C. B., late of in the county of died on the day of 187 at having

Non-Contentious
Business.

Sworn under
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Extracted by

during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 187 and made between the said C. B., therein described of in the county of esquire, of the first part, the said deceased, by her then name and description of A. G., of in the county of spinster, of the second part, and E. F., of in the same county, gentleman, and H. I., of gentleman, of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and with codicils thereto bearing date respectively [*insert dates*], and thereof appointed L. M. and O. P. executors.

And be it also known, that on the day of 187 the said last will and testament, with codicils, of the said A. B., deceased, hereunto annexed, was proved and entered in the Principal Registry of her Majesty's Court of Probate, and that probate of the said will and codicils of the said deceased, limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted by the aforesaid court to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will and codicils, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S.,
(L.S.) Registrar.

No. 14.—*Special Administration of the Rest of the Goods of a Married Woman.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., wife of C. B., late of in the county of died on the day of 187 at having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 187 and made between D. E., of in the county of esquire, of the first part, the said C. B., therein described, of in the county of gentleman, of the second part, and the said deceased by her then name and description of A. F., of in the county of widow, of the third part, and G. H., of the same place, esquire, of the fourth part, made and executed her last will and testament, bearing date the day of 187 and thereof appointed E. F. and G. H. executors. And be it also known, that on the day of 187 probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted by her Majesty's Court of Probate to the said E. F. and G. H., the executors named in the said will. And be it further

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known, that on the day of 187 letters of administration of the rest of the personal estate and effects of the said A. B., deceased, were granted by the aforesaid Court to the said C. B., the lawful husband of the said deceased, he having been first sworn well and faithfully to administer the same, by paying the just debts of the said deceased, and distributing the residue of her said estate and effects according to law, and to exhibit a true and perfect inventory of the rest of her estate and effects, and also to render a just and true account thereof whenever required by law so to do.

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Business.

(Signed) R. S.,
(L.S.) Registrar.

No. 15.—*Administration de Bonis non.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., late of in the county of deceased, died on 187 at intestate, and that since his death, to wit, in the month of 187 , letters of administration of all and singular his personal estate and effects were committed and granted by to C. D. [*insert the Court from which the grant issued and the relationship or character of administrator*] (which letters of administration now remain of record in), who, after taking such administration upon him, intermeddled in the personal estate and effects of the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the day of 187 letters of administration of the said personal estate and effects so left unadministered were granted by her Majesty's Court of Probate to he having been first sworn well and faithfully to administer the same, by paying the just debts of the said intestate, and distributing the residue of his estate and effects according to law, and to exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and to render a just and true account thereof whenever required by law so to do.

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(Signed) E. F.,
(L.S.) Registrar.

No. 16.—*Administration Bond.*

KNOW ALL MEN by these presents, that we, A. B. of C. D. of and E. F. of are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the Judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administration, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-named A. B. [or K. B., wife of the above-named A. B.], the [*as the case may be*] of I. J., late of deceased, who died on the day of and the intended administrator of all and singular the personal estate and effects of the said deceased [left unadministered by

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Business.

], do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased [so left unadministered], which have or shall come to hands, possession, or knowledge, or into the hands and possession of any other person for and the same so made do exhibit or cause to be exhibited into the Principal Registry of her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said or into the hands or possession of any other person or persons for do well and truly administer according to law; (that is to say) do pay the debts which did owe at decease, and further do make or cause to be made a just and true account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under the act of parliament, intituled "*An Act for the better settling of Intestates Estates*;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors, or other persons therein named, do exhibit the same into the said Court, making request to have it allowed and approved accordingly, if the said being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)

C. D. (L.S.)

E. F. (L.S.)

Signed, sealed, and delivered by the within-named A. B., C. D., and E. F., in the presence of

O. P., a clerk in the Principal Registry
of her Majesty's Court of Probate.
[or a commissioner.]

No. 17.—Administration Bond for Administrators with a Will.

KNOW ALL MEN by these presents, that we, A. B. of C. D. of and E. F. of are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the Judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such that if the above-named A. B. [or K. B., wife of the above-named A. B.], the [as the case may be] of I. J., late of deceased, and who died on the day of and the intended administrator with the will of all and singular the personal estate and effects of the said deceased do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased [left unadministered]

by] which have or shall come to hands, possession, or knowledge, and the same so made do exhibit or cause to be exhibited into the Principal Registry of her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects [so left unadministered] do well and truly administer (that is to say), do pay the debts of the said deceased which did owe at decease, and then the legacies contained in the said will annexed to the said letters of administration so to committed, as far as personal estate and effects [so left unadministered] will thereto extend, and the law charge and further do make or cause to be made a just and true account of said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the within-named A. B., C. D., and E. F., in the presence of

O. P., a clerk in the Principal Registry
of her Majesty's Court of Probate.
[or a commissioner.]

No. 18.—*Declaration of the Personal Estate and Effects of a Testator or an Intestate.*

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B., deceased.

A true declaration of all and singular the personal estate and effects of A. B., late of deceased, who died on the day of at which have at any time since his death come to the hands, possession, or knowledge of C. D., the intended administrator with the will [or administrator of the said estate and effects] of the said A. B., made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D., follows, to wit:

First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to	£	s.	d.
[The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular.]			

Household goods, furniture, plate, linen, china, jewellery, and trinkets, &c. may be described in general terms, the name and address of the licensed appraiser who valued them being added.

Where leasehold estates are described briefly, it will be necessary to state the valuation. But if they are described particularly, the valuation will not be required.

Policies of insurance and mortgages must be sufficiently described to identify them.]

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come

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The affirmation must be made according to the form of words prescribed by the statute applicable to the particular case.

to the hands, possession, or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of 187 the said C. D. was duly
sworn to [or being solemnly, sincerely, and truly
declared and affirmed] the truth of the above declaration,
at in the county of .
Before me,
[person authorized to administer
oaths under the act.]

No. 19.—*Justification of Sureties.*

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

We, C. D. of and E. F. of jointly and severally make oath [or solemnly, sincerely, and truly declare and affirm, according to the form of words prescribed by the statute applicable to the particular case], that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C. D. for myself further make oath [or as before], that I am, after payment of all my just debts, well and truly worth in real and personal estate the sum of ; and I the said E. F. for myself further make oath [or as before], that I am, after payment of all my just debts, well and truly worth in real and personal estate the sum of pounds.

Sworn by the said C. D. and }
E. F. at on the day }
of 187 .

Before me,
[person authorized to administer
oaths under the act.]

No. 20.—*Election by Minors of a Guardian.*

In her Majesty's Court of Probate, The Principal Registry.

In the goods of A. B., deceased.

Whereas A. B., late of in the county of deceased, died on or about the day of 187 at intestate, a widower, leaving C. D., E. F., and G. H. his natural and lawful and only children, the said C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant of the age of six years only:

Now we the said C. D. and E. F., do hereby make choice of and elect K. L., our lawful maternal uncle [or as the case may be] and one of our next of kin to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said A. B. deceased to be granted to him, for our use and benefit, and until one of us shall attain the age of twenty-one years [or for the purpose of renouncing for us, and on our

behalf, all our right, title, and interest to and in the letters of administration, &c., *as the case may be*] [*add, in cases where a proctor, solicitor, or attorney appears for the minors*] and we hereby appoint M. N. of _____ our proctor, solicitor, or attorney, to file or cause to be filed this our election for us in the Principal Registry of her Majesty's Court of Probate.

In witness whereof we have herenunto set our hands and seals this _____ day of _____ in the year 187 _____

C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the within-named C. D. and E. F., in the presence of

[*One disinterested witness sufficient.*]

No. 21.—*Renunciation of Probate and Administration with the Will annexed.*

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

Whereas A. B., late of _____ in the county of _____ deceased, died on the _____ day of _____ 187 _____ at _____; and whereas he made and duly executed his last will and testament [*or will and testament with a codicil thereto*] bearing date the _____ day of _____ 187 ⁽¹⁾, and thereof appointed C. D. executor and residuary legatee in trust [*or as the case may be*]:

(1) If there are codicils their dates should be also inserted.

Now I, the said C. D., do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein, with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [*and codicils, if any*], and to the letters of administration with the said will [*and codicils, if any*], annexed, of the personal estate and effects of the said deceased [*add in cases where a proctor, solicitor, or attorney is to appear for the person renouncing*], and I hereby appoint E. F. of _____ my proctor, solicitor, or attorney, to file or cause to be filed this renunciation for me in the said Principal Registry of her Majesty's Court of Probate.

In witness whereof I have hereto set my hand and seal, this _____ day of _____ 187 _____

Signed, sealed, and delivered by the said C. D. in the presence of _____
G. H.

[*One disinterested witness sufficient.*]

No. 22.—*Renunciation of Administration.*

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

Whereas A. B., late of _____ in the county of _____ deceased, died on the _____ day of _____ 187 _____ at _____ intestate, a widower; and whereas I, C. D., am his natural, lawful, and only child [*or as the case may be*]:

This to be varied so as to show the kindred or interest of the person renouncing.

Now I, the said C. D. do hereby expressly renounce all my right and title to the letters of administration of the personal

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estate and effects of the said deceased [*add in cases where a proctor, solicitor, or attorney is to appear for the person renouncing*], and I hereby appoint E. F. of my proctor, solicitor, or attorney, to file or cause to be filed this renunciation for me in the Principal Registry of her Majesty's Court of Probate.

In witness whereof I have hereto set my hand and seal, this
day of 187 .

Signed, sealed, and delivered by the said C. D. (L.S.)
of G. H. in the presence
[One disinterested witness sufficient.]

No. 23.—*Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.*

(For Executors.)

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

Insert the names, residence, and title or addition of the deponent.

I, C. D., of make oath [*or solemnly, sincerely, and truly declare and affirm, according to the form of words prescribed by the statute applicable to the particular case*] that I am one of the executors [*or as the case may be*] named in the last will and testament with codicils thereto of A. B., late of deceased;

Insert place of death or set forth the reason why the same cannot be furnished.

that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at

and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased, which he any way died possessed of, or entitled to, within the United Kingdom of Great Britain and Ireland, and for or in respect of which a probate of the said will and codicils is to be granted, exclusive of what the said deceased may have been possessed of, or entitled to as a trustee for any other person or persons, and not beneficially [*if the deceased died on or after 3rd April, 1860, add but including all personal estate and effects which the said deceased under any authority enabling him (or her) to dispose of the same as he (or she) might think fit, and has disposed of by his (or her said will)*] (a) and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of knowledge, information, and belief (b).

a If any leaseholds, insert clause No. 1, at page 484.

b If no leaseholds, insert clause No. 2, at page 484.

And further make oath [*or solemnly, sincerely, and truly declare and affirm*] that a part of the said personal estate and effects of the said deceased, under the value of pounds, is in England, and a further part thereof, amounting in value to the sum of and more particularly mentioned and set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the said deceased was not, at the time of his death, possessed of or entitled to any personal estate and effects in Ireland, to the best of knowledge, information and belief. [*Or end thus: And that a further part thereof, amounting in value to the sum of is in Ireland, to the best of knowledge, information, and belief.*]

If there is personal estate in Ireland, a further affidavit, in Form No. 26, is to be made by executors and administrators.

Sworn at on the }
day of 187 }
before me. } (Signed) C. D.

[person authorized to administer oaths under the act.]

No. 24.—*Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.*

Non-Contentious
Business.

(For Administrators with Will.)

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

I, C. D., of the party applying for letters of administration (with the will annexed) of the personal estate and effects of A. B., late of deceased make oath [or solemnly, sincerely, and truly declare and affirm according to the form of words prescribed by the statute applicable to the particular case], that the said deceased died on or about the day of one thousand hundred and at and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, within the United Kingdom of Great Britain and Ireland, and for or in respect of which letters of administration with the said will annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially (*if the deceased died on or after 3rd April, 1860, add but including all personal estates and effects which the said deceased under any authority enabling him [or her] to dispose of the same as he [or she] may think fit, and has disposed of by his [or her] said will (a), and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounnds to the best of knowledge, information, and belief (b).*

Insert the names, residence and title, or addition of the deponent.

Insert the place of death, or set forth the reason why the same cannot be furnished.

a If any leaseholds, insert clause No. 1, at page 484.

b If no leaseholds, insert clause No. 2, at page 484.

And further make oath [or solemnly, sincerely, and truly declare and affirm], that a part of the said personal estate and effects of the said deceased, under the value of is in England, and a further part thereof, amounting in value to the sum of and more particularly mentioned and set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the said deceased was not, at the time of his death, possessed of or entitled to any personal estate and effects in Ireland, to the best of knowledge, information, and belief. [*Or end thus: And that a further part thereof, amounting in value to the sum of is in Ireland, to the best of knowledge, information, and belief.*]

If there is personal estate in Ireland, a further affidavit, in Form No. 26, must be made by the executors or administrators.

Sworn at on (Signed) C. D.

the day of
187, Before me,

[person authorized to administer
oaths under the act.]

No. 25.—*Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.*

(For Administrators.)

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

I, C. D., of the party applying for letters of administration of the personal estate and effects of the said late of

Insert the names, residence and title, or addition of the deponent.

B.

K K

Non-Contentious
Business.

Insert the place of death,
or set forth the reason
why the same cannot be
furnished.

a If any leaseholds, insert
clause No. 1, at page 484.

b If no leaseholds, insert
clause No. 2, at page 484.

If there is personal estate
in Ireland, a further affi-
davit, in Form No. 26,
must be made by the
executors or adminis-
trators.

deceased make oath [or solemnly, sincerely, and truly declare and affirm, according to the form of words prescribed by the statute applicable to the particular case], that the said deceased died on or about the day of one thousand hundred and at and was at the time of his death domiciled in Eng-land, and that the personal estate and effects of the said deceased which he any way died possessed of, or entitled to, within the United Kingdom of Great Britain and Ireland, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially (a)

and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of knowledge, information, and belief (b). And further make oath [or solemnly, sincerely, and truly declare and affirm] that a part of the said personal estate and effects of the said deceased under the value of pounds is in England, and a further part thereof, amounting in value to the sum of and more particularly set forth in the inventory and valuation hereunto annexed, is in Scot-land, and that the said deceased was not at the time of his death possessed of or entitled to any personal estate and effects in Ireland to the best of knowledge, information, and belief. [Or end thus: And that a further part thereof, amounting in value to the sum of is in Ireland, to the best of knowledge, information, and belief.]

Sworn at the day of on } (Signed) C. D.
187, Before me, }
[person authorized to administer
oaths under the act.]

No. 26.—*Additional Affidavit and Schedule for the Commis-
sioners of the Inland Revenue when part of the Personal
Estate consists of Property in Ireland.*

In her Majesty's Court of Probate. The Principal Registry.

I, A. B., of an executor [or A. B. of and C. D. of executors], named in the last will and testament with codicils [or the party or parties applying for letters of administra- tion with the will and codicils annexed, of the personal estate and effects] of E. F. (the testator), late of who died on the day of 187, at [or, in cases of intestacy, in order to the due administration of the personal estate and effects of G. H. (the intestate), late of who died on the day of 187, at intestate], make oath and say; [or, in the case of Quakers or other affirmants, do or doth solemnly, sincerely, and truly declare and affirm] that ha made diligent search and due inquiry after and in respect of the personal estate and effects of the said deceased in Ireland, in order to ascertain the full amount and value thereof; and that to the best of knowledge, infor- mation, and belief, the whole of the personal estate and effects, rights and credits, of which the said deceased died possessed in Ireland, consisting of the property, moneys, securities, matters, and things specified in the account annexed to this affidavit [or affirma- tion] are under the value of £, exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other

person or persons, and not beneficially, and without deducting anything on account of the debts due and owing from the deceased.

Sworn at _____ in the county _____ (Signed) A. B.

Non-Contentious
Business.

of _____ on the _____ day
of 187 , Before me,

[person authorized to administer
oaths under the act.]

An Account of the Estate and Effects of

	Price of Stocks.	
Household goods, linen, wearing apparel, books, plate, jewels, &c.		£ s. d.
Property in the stocks or funds transferable at the bank.		
Leasehold property.. .. .		
Property in public companies		
Money out on mortgage and other securities ..		
Real estate devised to be sold, or value of lega- cies charged on real estate.		
Stock in trade, farming stock, and implements of husbandry.		
Other personal property not comprised under the foregoing heads.		

No. 28.—*Subpœna in a Proceeding in Common Form to bring
in a Script.*

In her Majesty's Court of Probate.

VICTORIA, by the grace of God of the United Kingdom of Great
Britain and Ireland Queen, Defender of the Faith.

To _____ of _____

WHEREAS it appears by an affidavit of _____ sworn on the
day of _____ and filed in the Principal Registry of our Court of
Probate, that a certain original paper or script, being or purporting
to be testamentary, to wit [here describe the paper], bearing date
the _____ day of 187 , is now in your possession, within your
power, or under your control :

NOW THIS IS TO COMMAND YOU, that within eight days after
service hereof on you, inclusive of the day of such service, you do
bring into and leave in the Principal Registry of our said Court [or
the District Registry attached to our said Court at _____] the said
original paper or script now in the possession, within the power, or
under the control, of you the said _____. And this you shall in no

K K 2

Non-Contentious
Business.

wise omit under pain of the law and the contempt thereof. Witness
[insert the name of the Judge], at the Court of Probate, the
day of 187 , in the year of our reign.
(Signed) E. F.,
Registrar.

Indorsement to be made of the Service.

This subpoena was served by G. H. on of on the
day of 187 , at .
(Signed) G. H.

No. 29.—*Affidavit of Handwriting.*

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B., deceased.

I, C. D., of in the county of make oath [or solemnly,
sincerely, and truly declare and affirm according to the form of
words prescribed by the statute applicable to the particular case],
that I knew and was well acquainted with A. B., late of in the
county of deceased, who died on the day of at
for many years before and down to the time of his death, and
that during such period I have frequently seen him write and also
subscribe his name to writings, whereby I have become well ac-
quainted with his manner and character of handwriting and subscrip-
tion, and having now with care and attention perused and inspected
the paper writing hereunto annexed, purporting to be and contain
the last will and testament of the said deceased, bearing date
beginning thus ending thus and being subscribed
thus "A. B." [or as the case may be], I further make oath, that I
verily and in my conscience believe the whole body, series, and con-
tents of the said will, together with the names "A. B." subscribed
thereto as aforesaid [or as the case may be], to be of the true and
proper handwriting and subscription of the said "A. B." deceased.

(Signed) C. D.
Sworn at on the day of 187 .

Before me,
G. H.

[person authorized to administer
oaths under the act.]

No. 30.—*Affidavit of Plight and Condition and Finding.*

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B., deceased.

I, C. D., of in the county of make oath [or solemnly,
sincerely, and truly declare and affirm according to the form of
words prescribed by the statute applicable to the particular case],
that I am the sole executor named in the paper writing now here-
unto annexed, purporting to be and contain the last will and testa-
ment of A. B., late of in the county of deceased, who
died on the day of at the said will bearing date
the day of and having viewed and perused the said will
and particularly observed [here recite the various obliterations, in-
terlineations, erasures, and alterations (if any), or describe the
plight and condition of the will, or any other matters requiring
to be accounted for, and set forth the finding of the will in its

present state, and if possible, trace the will from the possession of the deceased in his lifetime up to the time of making the affidavit]
I the deponent lastly make oath that the same is now in all respects in the same state, plight, and condition as when found [or as the case may be] by me as aforesaid.

Non-Contentious
Business.

(Signed) C. D.

Sworn at on the day of 187 .
Before me,
G. H.
[person authorized to administer
oaths under the act.]

No. 31.—*Affidavit of Search.*

In her Majesty's Court of Probate. The Principal Registry.
I, C. D., of in the county of make oath [or solemnly, sincerely, and truly declare and affirm according to the form of words prescribed by the statute applicable to the particular case], that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of A. B., late of deceased, who died on the day of in the year 187 , at the said will beginning thus, " ," ending thus, "In witness whereof I have hereunto set my hand this day of in the year of our Lord one thousand eight hundred and fifty-four" [or as the case may be], and being thus subscribed "A. B." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [or that the said will is without date, or as the case may be], I further make oath [or declare and affirm] that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [or declare and affirm] that I verily believe the said deceased died without having left any will, codicil, or testamentary paper whatever other than the said will by me hereinbefore deposed of.

This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.

(Signed) C. D.

Sworn at on the day of 187 .
Before me,
G. H.
[person authorized to administer
oaths under the act.]

No. 32.—*Caveat.*

In her Majesty's Court of Probate. The Principal Registry.
Let nothing be done in the goods of A. B., late of deceased, who died on the day of at unknown to C. D. of having interest [or to E. F. of proctor, solicitor, or attorney of parties having interest].
Dated this day of 187 .
(Signed) C. D. of [or E. F. of the proctor, solicitor, or attorney of parties having interest.]

Non-Contentious
Business.

No. 33.—*Warning to Caveat.*

In her Majesty's Court of Probate. The Principal Registry.

To A. B. of [or to C. D. of proctor, solicitor, or attorney of parties having interest].

Note.—These six days are to be exclusive of Sunday, Christmas Day and Good Friday.

You are hereby warned, within six days after the service of this warning upon you, inclusive of the day of such service, to enter an appearance, or to cause an appearance to be entered for you, in the Principal Registry of the Court of Probate to the caveat entered by you in the personal estate and effects of E. F., late of deceased, who died at on or about the day of 187, and to set forth your [or your client's] interest; and take notice, that in default of your so doing the said Court will proceed to do all such acts, matters, and things as shall be needful and necessary to be done in and about the premises.

(Signed) X. Y., Registrar.

Issued at the instance of R. S. [*here set forth what interest R. S. has, and if under a will or codicil, set forth the date thereof, and give an address within three miles of the General Post Office, at which notices requiring service may be left.*]

Indorsement to be made after Service.

This warning was served by I. K. on A. B. of [or on C. D. of the proctor, solicitor, or attorney] by whom the caveat was entered at [*here state how the service was effected*] on the day of 187.

(Signed) I. K.

FORMS OF JURAT.

If one deponent only—

Sworn at on the day of 187, Before me,

If more than one deponent—

Sworn by the said and [*give the christian and surnames of each deponent*] at on the day of 187,

Before me,

If the deponent be a marksman—

Sworn by the said at on the day of 187, this affidavit having been first read over to him [or her], who seemed perfectly to understand the same, and made his [or her] mark thereto in my presence,

Before me,

N.B.—In all cases of affirmation the exact words prescribed by the statute applicable to the particular case must be used, and none other will be received.

FORMS OF INSTRUMENTS

To be adopted in the DISTRICT REGISTRIES attached to the Court of Probate, as nearly as the Circumstances of each Case will allow.

No. 1.—*Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Probate.*

The District Registry at .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of probate of the will bearing date the day of 187 [and codicil or codicils bearing date the day of 187], of A. B., late of deceased, who died on or about the day of 187, at having at the time of his death a fixed place of abode at within the district of by C. D. of the executor [or by E. F. of the proctor, solicitor, or attorney of C. D. the executor] named in the said will [or codicil] in the words following.

[Here insert the extract from the will or codicil.]

(Signed) G. H.,
District Registrar.

No. 1 a.—*Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration, with the Will annexed.*

The District Registry at .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration, with the will annexed, the said will bearing date the day of 187 [or will and codicil or codicils annexed, the said will bearing date the day of 187, and the said codicil bearing date the day of 187], of the personal estate and effects of A. B., late of deceased, who died on or about the day of 187, at having at the time of his death a fixed place of abode at within the district of by C. D. of the residuary legatee [or as the case may be] named in the said will [or by E. F. of the proctor, solicitor, or attorney, of C. D., the residuary legatee named in the said will] in the words following.

[Here insert the extract from the will or codicil.]

(Signed) G. H.,
District Registrar.

Non-Contentious
Business.

No. 1 b.—*Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration.*

The District Registry at

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration of the personal estate and effects of A. B., late of deceased, who died on or about the day of 187, at intestate, having at the time of his death a fixed place of abode at within the district of a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece [*or as the case may be*], by C. D. of one of the lawful cousins german and next of kin of the deceased [*or by E. F. of the proctor, solicitor, or attorney of C. D., one of the, &c.*].

(Signed) G. H.,
District Registrar.

No. 1 c.—*Notice of the Entry of a Caveat in a District Registry.*

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that a caveat has been entered in the District Registry attached to her Majesty's Court of Probate at of the following tenor [*set out the caveat at full length*].

This day of 187
(Signed) C. D.,
District Registrar.

No. 2.—*Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December, 1837.*

In her Majesty's Court of Probate. The District Registry at

In the goods of A. B., deceased.

(1) Insert the names, residence and title, or addition of the deponent.

I, C. D., of (1) make oath [*or solemnly, sincerely, and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case*], that I am one of the subscribing witnesses to the last will and testament [*or codicil, as the case may be*] of A. B., late of in the county of deceased, the said will [*or codicil*] being now hereunto annexed, bearing date and that the said testator executed the said will [*or codicil*] on the day of the date thereof, by signing his name at the foot or end thereof [*or in the testimonium clause thereof, or in the attestation clause thereto, or as the case may be*], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same

N.B. If the signature is in testimonium clause or attestation clause, insert "meaning and intending the same for his final signature to his will."

time, and we thereupon attested and subscribed the said will [or codicil] in the presence of the said testator.

Non-Contentious
Business.

(Signed) C. D.
Sworn at on the day of 187 .

Before me,
[person authorized to administer
oaths under the act.]

No. 3.—*Affidavit for the Commissioners of Inland Revenue.—
For Executors.*

In her Majesty's Court of Probate. The District Registry
at .

In the goods of A. B., deceased.

I, C. D., of (1) make oath [or solemnly, sincerely, and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case], that I am one of the executors [or the executor] named in the last will and testament (2) of A. B., late of deceased; that the said deceased died on the day of one thousand hundred and at (3) and that the said deceased had at the time of his death a fixed place of abode at within the district of and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, (if the deceased died on or after 3rd April, 1860, add, "but inclusive of all personal estate and effects which the said deceased, under any authority enabling him [or her] to dispose of the same, as he [or she] might think fit, has disposed of by his [or her] said will,") [if any leaseholds include clause No. 1, given below], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [if no leaseholds insert clause No. 2, given below].

(1) Insert the names, residence and title, or addition of the deponent.

(2) Insert codicils, if any.

(3) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B. Forms for the two leasehold clauses to be printed on the back of the affidavit.

(Signed) C. D.
Sworn at on the day of 187 .

Before me,
[person authorized to administer
oaths under the act.]

Form of Leasehold Clause No. 1.

"Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives."

Form of Leasehold Clause No. 2.

"And I [or we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, either absolute or determinable on a life or lives, to the best of my [or our] knowledge, information, and belief."

Non-Contentions
Business.No. 3 a.—*Affidavit for the Commissioners of Inland Revenue.—
For Administrators with the Will annexed.*

In her Majesty's Court of Probate. The District Registry
at .

In the goods of A. B., deceased.

(1) Insert the names,
residence and title, or
addition of the deponent.

(2) Insert codicils, if any.

(3) Insert the place of
death, or set forth the
reason why the same
cannot be furnished.

N.B.—Forms for the two
leasehold clauses to be
printed at the back of the
affidavit.

I, C. D., of (1) the party applying for letters of administration, with the will (2) annexed, of the personal estate and effects of A. B., late of deceased, make oath [or solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*], that the said deceased died on the day of one thousand hundred and at (3) , having at the time of his death a fixed place of abode at within the district of and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration, with the said will (2) annexed, are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if the deceased died on or after 3rd April, 1860, add, "but inclusive of all personal estate and effects which the said deceased, under any authority enabling him [or her] to dispose of the same, as he [or she] might think fit, has disposed of by his [or her] said will,"*] [*if leaseholds insert clause No. 1, given before*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [*if no leaseholds insert clause No. 2, given in the preceding page*].

(Signed) C. D.
Sworn at on the day of 187 ,
Before me,
[*person authorized to administer
oaths under the act.*]

No 3 b.—*Affidavit for the Commissioners of Inland Revenue.—
For Administrators.*

In her Majesty's Court of Probate. The District Registry
at .

In the goods of A. B., deceased.

(1) Insert the names,
residence, title, or addition
of the deponent.

N.B. Forms for the two
leasehold clauses to be
printed at the back of the
affidavit.

(2) Insert place of death,
or set forth the reason
why the same cannot be
furnished.

I, C. D., of (1) the party applying for letters of administration of the personal estate and effects of A. B., late of make oath [or solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*]: that the said deceased died on the day of one thousand hundred and at (2) , having at the time of his death a fixed place of abode at within the district of and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [*if leaseholds insert clause No. 1 given in the preceding page*], and without deducting

anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No. 2 given in the preceding page*].

Non-Contentious
Business.

Sworn at on the day of 187 ,
Before me,
[*person authorized to administer
oaths under the act.*]

No. 4.—*Oath for an Executor.*

In her Majesty's Court of Probate. The District Registry
at .

In the goods of A. B., deceased.

I, C. D., of in the county of make oath and say [*or solemnly, sincerely, and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case*], that I believe the paper writing [*or the paper writings*] hereto annexed and marked by me to contain the true and original last will and testament [*or last will and testament with codicils*] of A. B., late of in the county of deceased, and that I am the sole executor [*or one of the executors*] therein named [*or executor according to the tenor thereof, executor during life, executrix during widowhood, or as the case may be*], and that I will well and faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [*or will and codicils*], so far as the same shall thereto extend and the law hind me; that I will exhibit a true and perfect inventory of all and singular the said estate and effects, and render a just and true account thereof, whenever required by law so to do; that the testator died at in the county of on the day of 187 ; and that the said testator had at the time of his death a fixed place of abode at within the district of and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of pounds, to the best of my [*or our*] knowledge, information, and belief.

Insert the names, residence and title, or addition of the deponent, and relationship, if any, of the executor to the testator.

Each testamentary paper to be marked by the persons sworn and the person administering the oath.

When several executors are appointed, and some or one of them only sworn, a memorandum should be made in the margin of the oath that power is to be reserved to the other executors, or that they have renounced.

Sworn at on the day of 187 ,
Before me,
[*person authorized to administer
oaths under the act.*]

No. 5.—*Oath for Administrators with the Will.*

In her Majesty's Court of Probate. The District Registry
at .

In the goods of A. B., deceased.

I, C. D., of in the county of make oath and say [*or solemnly, sincerely, and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case*], that I believe the paper writing [*or the paper writings*] hereunto annexed and marked by me to contain the true

Insert the names, residence and title, or addition of the deponent.

Non-Contentious
Business.

Each testamentary paper to be marked by the person sworn and the person administering the oath.

and original last will and testament [or the last will and testament with codicils] of A. B., late of in the county of deceased, and that E. F. [*insert his relationship, if any, to the deceased*] the sole executor therein named survived the said deceased, and is since dead without having taken probate thereof [*or as the fact may be*], and that I am the [*insert the relationship to deceased, if any*] residuary legatee in trust named therein [*or as the fact may be*], and that I will well and faithfully administer the personal estate and effects of the said deceased by paying his just debts and the legacies contained in his will [or will and codicils], and distributing the residue of his estate according to law; that I will exhibit a true and perfect inventory of all and singular the said personal estate and effects, and render a just and true account thereof, whenever required by law so to do; that the testator died at on the day of 187, that the said testator at the time of his death had a fixed place of abode at within the district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief.

(Signed) C. D.
187,
Before me,
[person authorized to administer
oaths under the act.]

Sworn at on the day of

No. 6.—Oath for Administrators.

In her Majesty's Court of Probate. The District Registry
at

In the goods of A. B., deceased.

Insert the names, residence and title, or addition of the deponent.

I, C. D., of in the county of make oath and say [*or solemnly, sincerely, and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case*], that A. B., late of deceased, died intestate a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece [*or as the case may be*], and that I am the lawful cousin german [*or as the case may be*] and one of the next of kin [*or only next of kin of the said deceased as the case may be*]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his estate and effects according to law; that I will exhibit a true and perfect inventory of all and singular the said estate and effects, and render a just and true account thereof, whenever required by law so to do; that the said deceased died at on the day of 187, that at the time of his death the said deceased had a fixed place of abode at within the district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief.

In all cases, where applicable, add "only next of kin" or "one of the next of kin."

(Signed) C. D.
187 .
Before me,
[person authorized to administer
oaths under the act.]

Sworn at on the day of

No. 7.—*Probate.*Non-Contentious
Business.In her Majesty's Court of Probate. The District Registry
at .

Be it known, that on the day of 187 the last will and testament [*or the last will and testament with codicils*] hereunto annexed of A. B., late of deceased, who died on at and who at the time of his death had a fixed place of abode at within the district of was proved and registered in the District Registry attached to her Majesty's Court of Probate at and that administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid Court to C. D. the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or will and codicils*], and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

Extracted by

Sworn under
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(Signed) E. F.,
(L.S.) District Registrar.

No. 8.—*Letters of Administration with the Will annexed.*In her Majesty's Court of Probate. The District Registry
at .

Be it known, that A. B., late of in the county of deceased, who died on the day of at and who at the time of his death had a fixed place of abode at within the district of made and duly executed his last will and testament [*or will and codicil thereto*] and did therein name [*or did not therein name any*] executor [*or as the case may be*]. And be it further known that on the day of 187 letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [*insert the character in which the grant is taken*], he having been first sworn well and faithfully to administer the same by paying the just debts of the said deceased, and the legacies contained in his will [*or will and codicils*] and distributing the residue of his estate according to law, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do.

Extracted by

Sworn under
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(Signed) E. F.,
(L.S.) District Registrar.

No. 9.—*Letters of Administration.*In her Majesty's Court of Probate. The District Registry
at .

Be it known, that on the day of 187 letters of administration of all and singular the personal estate and effects of A. B., late of deceased, who died on 187 at in testate, and had, at the time of his death, a fixed place of abode at within the district of were granted by her Majesty's

Extracted by

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Non-Contentious
Business.

Court of Probate to C. D. the lawful widow and relict [*or as the case may be*] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying the just debts of the said intestate, and distributing the residue of his estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
(L.S.) District Registrar.

No. 10.—*Double Probate.*

In her Majesty's Court of Probate. The District Registry
at .

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Extracted by

Be it known, that on the day of 1877 the last will and testament [*or the last will and testament with codicils*] hereunto annexed, of A. B., late of deceased, who died on at and had, at the time of his death, a fixed place of abode at within the district of was proved and registered in the District Registry attached to her Majesty's Court of Probate at and that administration of all and singular the personal estate and effects of the said deceased, was granted by the aforesaid Court to C. D., one of the executors named in the said will [*or codicil*], he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in his will [*or will and codicils*], and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will. And be it further known, that on the day of 1877, the said will of the said deceased was also proved in the said District Registry, and that the like administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid Court to the said E. F., he having been first duly sworn well and faithfully to administer the same, by paying the just debts of the said deceased and the legacies contained in his will [*or will and codicils*], and to exhibit a true and perfect inventory of all and singular the said estate and effects of the said deceased, and to render a just and true account thereof whenever required by law so to do.

(Signed) G. H.,
(L.S.) District Registrar.

No. 11.—*Exemplification of Probate or of Letters of Administration with Will annexed.*

In her Majesty's Court of Probate. The District Registry
at .

Sworn under
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Extracted by

Be it known, that upon search being made in the District Registry attached to her Majesty's Court of Probate at it appears that on the day in the year of our Lord 1877, the last will and testament with codicils of A. B., late of deceased, who died at on or about 1877, and had, at the time of his

death, a fixed place of abode at within the district of was proved by C. D., the executor named therein [*or* letters of administration with the last will and testament and codicils annexed of the personal estate and effects of A. B., late of, &c., were granted to C. D., as the], and which probate [*or* letters of administration] now remain of record in the said District Registry. The true tenor of the said will (and codicils) is in the words following, to wit:

[*Here follow the will, codicils, and such affidavits as are registered.*]

In faith and testimony whereof these letters testimonial are issued. Given at as to the time of the aforesaid search, and the sealing of these presents, this day of in the year of our Lord 187 .

(Signed) E. F.,
(L.S.) District Registrar.

Non-Contentious
Business.

No. 12.—*Exemplification of Administration.*

In her Majesty's Court of Probate. The District Registry at

Be it known, that upon search being made in the District Registry, attached to her Majesty's Court of Probate at it appears that on the day of in the year of our Lord 187 , letters of administration of all and singular the personal estate and effects of A. B., late of who died at on or about and had, at the time of his death, a fixed place of abode at within the district of were granted to C. D., the [*or* one of the] of the said deceased, and which letters of administration now remain of record in the said District Registry. The true tenor of the said letters of administration is in the words following, to wit:

[*Here the letters of administration are to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and sealing of these presents, this day of in the year of our Lord 187 .

(Signed) E. F.,
(L.S.) District Registrar.

Extracted by

Sworn under
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No. 13.—*Special Administration with the Will of a Married Woman annexed.*

In her Majesty's Court of Probate. The District Registry at

Be it known, that A. B. [wife of C. B.], late of in the county of died on the day of 187 , at having at the time of her death a fixed place of abode at within the district of and having during her coverture with the said C. B., by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 187 , and of all other powers and authorities her enabling, made and executed her last will and testament bearing date the day of 187 , with a codicil thereto, bearing date the day of 187 (*or as*

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Non-Contentious
Business.

the case may be), and thereof appointed her said husband, the said C. B., sole executor, and that the said C. B., as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And be it also known, that on the day of 187 letters of administration (with the said will [and codicil] annexed) of all and singular the personal estate and effects of the said deceased were granted and committed at the District Registry attached to her Majesty's Court of Probate at to the said C. B., he having been first sworn well and faithfully to administer the same by paying the just debts of the said deceased, and the legacies contained in her will and codicil, and distributing the residue of her estate according to law, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) J. S.,
(L.S.) District Registrar.

No. 14.—*Limited Probate of a Married Woman's Will.*

In her Majesty's Court of Probate. The District Registry at

Be it known, that A. B. [wife of C. B.], late of in the county of died on the day of 187 at having at the time of her death a fixed place of abode at within the district of and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 187 and made between the said C. B. therein described of in the county of esquire, of the first part, the said deceased, by her then name and description of A. G. of in the county of spinster, of the second part, and E. F. of in the same county, gentleman, and H. I. of gentleman, of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and (with codicils thereto, bearing date respectively [*insert date*]) and thereof appointed L. M. and O. P. executors.

And be it also known, that on the day of 187 the said last will and testament (with codicils) of the said A. B., deceased, hereto annexed, was proved and registered in the District Registry attached to her Majesty's Court of Probate at and that probate of the said will (and codicils) of the said deceased, limited to the administration of all such personal estate and effects as she, the said deceased, by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will (and codicils) appointed or disposed of accordingly, but no further or otherwise, was granted by the aforesaid Court to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same by paying the just debts of the deceased, and the legacies contained in her said will (and codicils), and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S.,
(L.S.) District Registrar.

Sworn under
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No. 15.—*Special Administration of the rest of the Goods of a Married Woman.*Non-Contentious
Business.In her Majesty's Court of Probate. The District Registry
at .

Be it known, that A. B., wife of C. B., late of in the county of died on the day of 187 at having at the time of her death a fixed place of abode at within the district of and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement bearing date the day of 187 and made between the said C. B., therein described of in the county of gentleman, of the first part, the said deceased, by her then name and description of A. F. of in the county of widow, of the second part, and G. H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 187 and thereof appointed E. F. and G. H. executors. And be it also known, that on the day of 187 probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted at the District Registry attached to her Majesty's Court of Probate at to the said E. F. and G. H., the executors named in the said will. And be it further known, that on the day of 187 letters of administration of the rest of the personal estate and effects of the said A. B. deceased were granted at the said District Registry to the said C. B. the lawful husband of the said deceased, he having been first sworn well and faithfully to administer the same, by paying the just debts of the said deceased, and distributing the residue of her said estate and effects according to law, and to exhibit a true and perfect inventory of the rest of her estate and effects, and also to render a just and true account thereof whenever required by law so to do.

(Signed) R. S.,
(L.S.) District Registrar.

Extracted by

Sworn under
£No. 16.—*Administration de Bonis non.*In her Majesty's Court of Probate. The District Registry
at .

Be it known, that A. B., late of in the county of deceased, died on 187 at intestate, and had at the time of his death a fixed place of abode at within the district of and that since his death, to wit, in the month of 187 letters of administration of all and singular his personal estate and effects were committed and granted at the District Registry attached to her Majesty's Court of Probate at to C. D. [insert the Court from which the grant issued and the relationship or character of administrator], which letters of administration now remain of record in the said District Registry, who, after taking such administration upon him, intermeddled in the personal estate and effects of the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the

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Non-Contentious
Business.

day of 187 letters of administration of the said personal estate and effects so left unadministered were granted at the said District Registry to he having been first sworn well and faithfully to administer the same, by paying the just debts of the said intestate, and distributing the residue of his estate and effects according to law, and to exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
(L.S.) District Registrar.

No. 17.—*Administration Bond.*

KNOW ALL MEN by these presents, that we, A. B. of C. D. of and E. F. of are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the Judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-named A. B. [or K. B., wife of the above-named A. B.], the [here state the character in which the party takes the grant] of I. J., late of deceased, who died on the day of and the intended administrator of all and singular the personal estate and effects of the said deceased [left unadministered by] do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased [so left unadministered] which have or shall come to hands, possession, or knowledge, or into the hands and possession of any other person for and the same so made do exhibit or cause to be exhibited into the District Registry attached to her Majesty's Court of Probate at whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said or into the hands or possession of any other person or persons for do well and truly administer according to law; (that is to say,) do pay the debts which did owe at decease, and further do make or cause to be made a just and true account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under the Act of Parliament, intituled "An Act for the better settling of Intestates' Estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors, or other persons therein named, do exhibit the same into the said Court, making request to have it allowed and approved accordingly, if the said being thereunto required, do render and deliver the letters of administration granted to him (approbation of such testament being first had and made) in the said Court, then this obliga-

tion to be void and of none effect, or else to remain in full force and virtue.

Non-Contentious
Business.

A. B. (L.S.)

C. D. (L.S.)

E. F. (L.S.)

Signed, sealed, and delivered by the within-named A. B., C. D., and E. F., in the presence of

M. N., District Registrar at
[or a commissioner.]

No. 18.—*Administration Bond for Administrators with the Will.*

KNOW ALL MEN by these presents, that we, A. B. of C. D. of and E. F. of are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the Judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-named A. B. [or K. B., wife of the above-named A. B.], the [here state the character in which the party takes the grant] of I. J., late of deceased, and who died on the day of and the intended administrator with the will of all and singular the personal estate and effects of the said deceased do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased [left unadministered by] which have or shall come to hands, possession, or knowledge, and the same so made do exhibit or cause to be exhibited into the District Registry attached to her Majesty's Court of Probate at whenever required by law so to do, and the same personal estate and effects [so left unadministered] do well and truly administer, (that is to say,) do pay the debts of the said deceased which did owe at decease, and then the legacies contained in the said will annexed to the said letters of administration so to committed, as far as the said personal estate and effects [so left unadministered] will thereto extend, and the law charge and further do make or cause to be made a just and true account of said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)

C. D. (L.S.)

E. F. (L.S.)

Signed, sealed, and delivered by the within-named A. B., C. D., and E. F., in the presence of

M. N., District Registrar at
[or a commissioner.]

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Non-Contentious
Business.

No. 19.—*Declaration of the Personal Estate and Effects of a Testator or an Intestate.*

In the goods of A. B., deceased.

A true declaration of all and singular the personal estate and effects of A. B., late of deceased, who died on the day of at and had at the time of his death a fixed place of abode at within the district of which have at any time since his death come to the hands, possession, or knowledge of C. D., the intended administrator with the will [or administrator] of the said estate and effects, made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D., follows, to wit:

First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to £ s. d.

[The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular.

Household goods, furniture, plate, linen, china, jewellery, and trinkets, &c., may be described in general terms, the name and address of the licensed appraiser who valued them being added.

Where leasehold estates are described briefly, it will be necessary to state the valuation. But if they are described particularly, the valuation will not be required.

Policies of insurance and mortgages must be sufficiently described to identify them.]

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this declarant, save as is hereinbefore set forth. (Signed) C. D.

On the day of 187 the said C. D. was duly sworn to [or being solemnly, sincerely, and truly declared and affirmed] the truth of the above declaration, at in the county of ,

Before me,

[person authorized to administer oaths under the act.]

The affirmation must be made according to the form of words prescribed by the statute applicable to the particular case.

No. 20.—*Justification of Sureties.*

In her Majesty's Court of Probate. The District Registry at .

In the goods of A. B., deceased.

We, C. D. of and E. F. of jointly and severally make oath [or solemnly, sincerely, and truly declare and affirm, according to the form of words prescribed by the statute applicable to the particular case], that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C. D. for myself further make oath [or as before], that I am, after payment of all my just debts, well and truly worth in real and personal estate the sum of ; and I the said E. F. for myself further make oath [or as before],

that I am, after payment of all my just debts, well and truly worth
in real and personal estate the sum of pounds.

Non-Contentious
Business.

Sworn by the said C. D.

and E. F. at

on the

of

187 .

day }

Before me,

[*person authorized to administer
oaths under the act.*]

No. 21.—*Election by Minors of a Guardian.*

In her Majesty's Court of Probate. The District Registry
at

In the goods of A. B., deceased.

Whereas A. B., late of in the county of deceased,
died on or about the day of 187 at having at
the time of his death a fixed place of abode at within the
district of and intestate, a widower, leaving C. D., E. F. and
G. H. his natural and lawful and only children, the said C. D. being
a minor of the age of twenty years only, the said E. F. being also
a minor of the age of nineteen years only, and the said G. H. being
an infant of the age of six years only:

Now we, the said C. D. and E. F., do hereby make choice of and
elect K. L., our lawful *maternal* uncle [*or as the case may be*] and
one of our next of kin, to be our curator or guardian, for the pur-
pose of his obtaining letters of administration of the personal estate
and effects of the said A. B. deceased to be granted to him, for our
use and benefit, and until one of us shall attain the age of twenty-
one years [*or for the purpose of renouncing for us, and on our*
behalf, all our right, title, and interest to and in the letters of
administration, &c. *as the case may be*] [*add, in cases where a*
proctor, solicitor, or attorney appears for the minors], and we
hereby appoint M. N. of our proctor, solicitor, *or attorney*, to
file or cause to be filed this our election for us in the District
Registry attached to her Majesty's Court of Probate at

In witness whereof we have hereunto set our hands and seals
this day of in the year 187 .

C. D. (L.S.)

E. F. (L.S.)

Signed, sealed, and delivered by the within-named C. D. and
E. F., in the presence of

[*One disinterested witness sufficient.*]

No. 22.—*Renunciation of Probate and Administration with the Will annexed.*

In her Majesty's Court of Probate. The District Registry
at

In the goods of A. B., deceased.

Whereas A. B., late of in the county of deceased,
died on the day of 187 at and had, at the
time of his death, a fixed place of abode at within the dis-
trict of ; and whereas he made and duly executed his last
will and testament [*or will and testament with a codicil thereto*],

Non-Contentious
Business.

(1) If there are codicils
their dates should be also
inserted.

bearing date the day of 187 (1), and thereof appointed
C. D. executor and residuary legatee in trust [*or as the case may
be*]:

Now I, the said C. D., do hereby declare, that I have not inter-
meddled in the personal estate and effects of the said deceased, and
will not hereafter intermeddle therein, with intent to defraud
creditors, and I do hereby expressly renounce all my right and title
to the probate and execution of the said will [*and codicils, if any*],
and to the letters of administration with the said will [*and codicils,
if any*], annexed, of the personal estate and effects of the said de-
ceased [*add in cases where a proctor, solicitor, or attorney is to
appear for the person renouncing*], and I hereby appoint E. F. of
my proctor, solicitor, or attorney, to file or cause to be filed
this renunciation for me in the District Registry attached to her
Majesty's Court of Probate at

In witness whereof I have hereto set my hand and seal, this
day of 187 .

C. D. (L.S.)

Signed, sealed, and delivered by the said C. D. in the presence
of G. H.

[*One disinterested witness sufficient.*]

No. 23.—*Renunciation of Administration.*

In her Majesty's Court of Probate. The District Registry
at .

In the goods of A. B., deceased.

This to be varied so to
show the kindred or
interest of the person
renouncing.

Whereas A. B., late of in the county of deceased,
died on the day of 187 at intestate, a widower,
and had, at the time of his death, a fixed place of abode at
within the district of ; and whereas I, C. D., am his natural,
lawful, and only child [*or as the case may be*] and next of kin [*or
one of next of kin*]:

Now I, the said C. D. do hereby expressly renounce all
my right and title to the letters of administration of the personal
estate and effects of the said deceased [*add in cases where a proctor,
solicitor, or attorney is to appear for the person renouncing*],
and I hereby appoint E. F. of my proctor, solicitor, or at-
torney, to file or cause to be filed this renunciation for me in the
District Registry attached to her Majesty's Court of Probate at .

In witness whereof I have hereto set my hand and seal, this
day of 187 .

C. D. (L.S.)

Signed, sealed, and delivered by the said C. D. in the presence
of G. H.

[*One disinterested witness sufficient.*]

No. 24.—*Affidavit for the Commissioners of Inland Revenue
when Stamp Duty is paid upon the total value of the Per-
sonal Estate in the United Kingdom.*

(For Executors.)

In her Majesty's Court of Probate. The District Registry
at .

In the goods of A. B., deceased.

Insert the names, resi-
dence and title, or addi-
tion of the deponent.

I, C. D., of make oath [*or solemnly, sincerely, and truly*
affirm and declare, according to the form of words prescribed by

the statute applicable to the particular case], that I am one of the executors [*or as the case may be*] named in the last will and testament, with codicils thereto, of A. B., late of deceased; that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at having at the time of his death a fixed place of abode at within the district of and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for or in respect of which a probate of the said will and codicils is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially (*if the deceased died on or after 3rd April, 1860, add, but including all personal estate and effects which the said deceased under any authority enabling him [or her] to dispose of the same as he [or she] might think fit, and has disposed of by his [or her] said will,*^a and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of knowledge, information, and belief.^b

And further make oath [*or solemnly, sincerely, and truly declare and affirm*] that a part of the said personal estate and effects of the said deceased, under the value of pounds, is in England, and a further part thereof, amounting in value to the sum of and more particularly mentioned and set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the said deceased was not, at the time of his death, possessed of or entitled to any personal estate and effects in Ireland, to the best of knowledge, information, and belief. [*Or end thus: and that a further part thereof, amounting in value to the sum of is in Ireland, to the best of knowledge, information and belief.*]

Sworn at the day of on } (Signed) C. D.
187 . Before me.

[*person authorized to administer oaths under the act.*]

Non-Contentious Business.

Insert place of death, or set forth the reason why the same cannot be furnished.

a If any leaseholds, insert clause No. 1, at page 505.

b If no leaseholds, insert clause No. 2, at page 505.

If there is personal estate in Ireland, a further affidavit, in Form No. 27, is to be made by executors and administrators.

No. 25.—Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.

(For Administrators with Will.)

In her Majesty's Court of Probate. The District Registry at

In the goods of A. B., deceased.

I, C. D., of the party applying for letters of administration (with the will annexed) of the personal estate and effects of A. B., late of deceased, make oath [*or solemnly, sincerely, and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case*], that the said deceased died on or about the day of one thousand hundred and at having at the time of his death a fixed place of abode at within the district of and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased which he any way

Insert the names, residences and titles, or addition of the deponent.

Non-Contentious
Business.

Insert the place of death,
or set forth the reason
why the same cannot be
furnished.

a If any leaseholds, insert
clause No. 1, at page 505.

b If no leaseholds, insert
clause No. 2, at page 505.

If there is personal estate
in Ireland, a further affi-
davit, in Form No. 27,
must be made by the
executors or adminis-
trators.

died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for or in respect of which letters of administration with the said will annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially (*if the deceased died on or after 3rd April, 1860, add, but including all personal estate and effects which the said deceased under any authority enabling him [or her] to dispose of the same as he [or she] may think fit, and has disposed of by his [or her] said will*),^a and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of knowledge, information, and belief.^b And further make oath [or solemnly, sincerely, and truly affirm and declare] that a part of the said personal estate and effects of the said deceased, under the value of is in England, and a further part thereof, amounting in value to the sum of and more particularly mentioned and set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the deceased was not, at the time of his death, possessed of or entitled to any personal estate and effects in Ireland, to the best of knowledge, information and belief. [*Or end thus: and that a further part thereof, amounting in value to the sum of is in Ireland, to the best of knowledge, information, and belief.*]

Sworn at on (Signed) C. D.
the day of }
187 . Before me,
[*person authorized to administer
oaths under the act.*]

No. 26.—*Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.*

(For Administrators.)

In her Majesty's Court of Probate. The District Registry
at .

In the goods of A. B., deceased.

Insert the names, resi-
dences and titles, or addi-
tions of the persons
making the affidavit.

I, C. D., of the party applying for letters of administration of the personal estate and effects of A. B., late of in the county of deceased, make oath [or solemnly, sincerely, and truly declare and affirm, according to the form of words prescribed by the statute applicable to the particular case], that the said deceased died on or about the day of one thousand hundred and at and had at the time of his death a fixed place of abode at within the district of and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially^a

Insert the place of death,
or set forth the reason
why the same cannot be
furnished.

a If any leaseholds, insert
clause No. 1, at page 505.

And without deducting anything on account of the debts due and

owing from the said deceased, are under the value of pounds, to the best of knowledge, information, and belief.^b And I further make oath [or solemnly, sincerely, and truly affirm and declare] that a part of the said personal estate and effects of the said deceased, under the value of pounds, is in England, and a further part thereof, amounting in value to the sum of and more particularly set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the said deceased was not at the time of his death possessed of or entitled to any personal estate and effects in Ireland to the best of knowledge, information, and belief. [Or end thus: That a further part thereof, amounting in value to the sum of is in Ireland to the best of knowledge, information, and belief.]

Non-Contentious
Business.

^b If no leaseholds, insert clause No. 2, at page 505.
If there is personal estate in Ireland, a further affidavit, in Form No. 27, is to be made by executors or administrators.

Sworn at on (Signed) C. D.
the day of }
187 . Before me, }
 [person authorized to administer
 oaths under the act.]

No. 27.—*Additional Affidavit and Schedule for the Commissioners of Inland Revenue when part of the Personal Estate consists of Property in Ireland.*

In her Majesty's Court of Probate. The District Registry at .

I, A. B., of an executor [or A. B. of and C. D. of executors] named in the last will and testament with codicils [or the party or parties applying for letters of administration with the will and codicils annexed, of the personal estate and effects] of E. F. (the testator), late of who died on the day of 187 at [or in cases of intestacy, in order to the due administration of the personal estate and effects of G. H. (the intestate), late of who died on the day of 187 at intestate], and had at the time of his death a fixed place of abode at within the district of make oath and say [or, in the case of Quakers or other affirmants, do or doth solemnly, sincerely, and truly affirm and declare], that ha made diligent search and due inquiry after and in respect of the personal estate and effects of the said deceased in Ireland, in order to ascertain the full amount and value thereof; and that to the best of knowledge, information, and belief, the whole of the personal estate and effects, rights and credits, of which the said deceased died possessed in Ireland, consisting of the property, moneys, securities, matters, and things specified in the account annexed to this affidavit [or affirmation], are under the value of pounds exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, and without deducting anything on account of the debts due and owing from the deceased.

(Signed) A. B.
187 .
Before me, G. H.
 [person authorized to administer
 oaths under the act.]

Non-Contentious
Business.*An Account of the Estate and Effects of*

	Price of Stocks.	£ s. d.
Household goods, linen, wearing apparel, books, plate, jewels, &c.		
Property in the stocks or funds transferable at the bank.		
Leasehold property.. .. .		
Property in public companies		
Money out on mortgage and other securities ..		
Real estate devised to be sold, or value of lega- cies charged on real estate.		
Stock in trade, farming stock, and implements of husbandry.		
Other personal property not comprised under the foregoing heads.		

No. 28.—*Affidavit of Handwriting.*

In her Majesty's Court of Probate. The District Registry
at .

In the goods of A. B., deceased.

I, C. D., of in the county of make oath [or solemnly, sincerely, and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case], that I knew and was well acquainted with A. B., late of in the county of deceased, who died on the day of at and had at the time of his death a fixed place of abode at within the district of for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, bearing date beginning thus ending thus and being described thus "A. B." [or as the case may be], I further make oath, that I verily and in my conscience believe the whole body, series, and contents of the said will, together with the names "A. B." subscribed thereto as aforesaid [or as the case may be], to be of the

true and proper handwriting and subscription of the said "A. B." deceased.

Non-Contentious Business.

(Signed) C. D.
day of 187 .
Before me,
G. H.
*[person authorized to administer
oaths under the act.]*

No. 29.—*Affidavit of Plight and Condition and Finding.*

In her Majesty's Court of Probate. The District Registry
at _____

In the goods of A. B., deceased.

I, C. D., of _____ in the county of _____ make oath [or solemnly, sincerely, and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case], that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of A. B., late of _____ in the county of _____ deceased, who died on the _____ day of _____ at _____ and had at the time of his death a fixed place of abode at _____ within the district of _____ the said will bearing date the _____ day of _____ and having viewed and perused the said will, and particularly observed [here recite the various obliterations, interlineations, erasures, and alterations (if any), or describe the plight and condition of the will, or any other matters requiring to be accounted for, and set forth the finding of the will in its present state, and, if possible, trace the will from the possession of the deceased in his lifetime up to the time of making the affidavit]; I the deponent lastly make oath that the same is now in all respects in the same state, plight, and condition as when found [or as the case may be] by me as aforesaid.

(Signed) C. D.
Sworn at on the day of 187 .
Before me,
G. H.
*[person authorized to administer
oaths under the act.]*

No. 30.—*Affidavit of Search.*

In her Majesty's Court of Probate. The District Registry
at .

I, C. D., of _____ in the county of _____ make oath [or solemnly, sincerely, and truly declare and affirm, according to the form of words prescribed by the statute applicable to the particular case], that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of A. B., late of _____ deceased, who died on the _____ day of _____ in the year 187 _____ at _____ and had at the time of his death a fixed place of abode at _____ within the district of _____ the said will beginning thus, “ _____ ”

This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.

Non-Contentious
Business.

ending thus, "In witness whereof I have hereunto set my hand this day of _____ in the year of our Lord one thousand eight hundred and fifty-four" [*or as the case may be*], and being thus subscribed, "A. B." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [*or that the said will is without date, or as the case may be*], I further make oath [*or declare and affirm*] that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [*or declare or affirm*], that I verily believe the said deceased died without having left any will, codicil or testamentary paper whatever other than the said will by me hereinbefore deposed of.

Sworn at _____ on the _____ day of _____ 187 .
(Signed) C. D.
Before me,
G. H.
[*person authorized to administer
oaths under the act.*]

No. 31.—*Caveat.*

In her Majesty's Court of Probate. The District Registry
at _____.

Let nothing be done in the goods of A. B., late of _____ deceased, who died on the _____ day of _____ at _____ and had at the time of his death a fixed place of abode at _____ within the district of _____ unknown to C. D. of _____ having interest [*or to E. F. of _____ proctor, solicitor, or attorney of parties having interest.*]

Dated this _____ day of _____ 187 .
(Signed) C. D. of _____ [*or E. F. of _____ the
proctor, solicitor, or attorney of parties having interest.*]

Sworn at _____ on the _____ day of _____ 187 _____,
Before me,

Keywords:

Sworn by the said and, (give the christian
and surnames of each deponent) at on the
day of 187 ,
Before me,

Keywords: child sexual abuse; disclosure; self-blame

Sworn by the said at on the day of
187 this affidavit having been first read over to him [*or*
her], who seemed perfectly to understand the same, and made
his [*or her*] mark thereto in my presence,
Before me.

References

Sworn by the said _____ at _____ on the _____ day of _____ 187____ by interpretation into the _____ language by C. D. of _____ who had previously sworn that he was well acquainted with both languages and faithfully to interpret.

(The interpreter should sign his name on the affidavit for the purpose of identification.)

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F O R M S,

Which are to be followed as nearly as the Circumstances of each Case will allow.

[Stamp, 16s. 8d.]

FORM A.

Application to a County Court for proceedings to be taken under the act 20 & 21 Vict. c. 77, for amending the law relating to probates and letters of administration in England.

I, A. B., of [or C. D., proctor, solicitor or attorney of A. B. of], do hereby apply to the Judge of the above Court for a decree to be made by him, according to the provisions of the above act, for the grant [or revocation] of probate of the will [or letters of administration in the goods] of [here insert name and address of testator or intestate]; and I hereby state that the person who has applied for probate or letters of administration [or who has obtained probate or letters of administration, or is the party against whom this application is made] is E. F. of

A. B. [or C. D., proctor, solicitor or attorney of A. B. of].

FORM B.

(Seal.)

In the County Court of holden at
Between A. B., plaintiff,
[address]
and
C. D., defendant,
[address].

Take notice, that at a County Court to be holden at on the day of at the hour of in the noon, the Judge of this Court will proceed to make a decree for the grant [or revocation] of probate of the will [or letters of administration in the goods] of [here insert name and address of testator or intestate], unless cause be then shown to the contrary; and you are hereby informed, that, if you do not attend on that day, the Judge may proceed to make such decree in your absence.

Dated this day of 187 .

To the plaintiff [or defendant]. Registrar of the Court.

Hours of attendance at the office of the registrar [place of office] from ten till four, except on when the office will be closed at one.

FORM C.

(Seal.)

In the County Court of holden at
Between A. B., plaintiff,
and
C. D., defendant.

Whereas an application has been made to this Court to revoke the grant of probate of the will [or letters of administration granted by you in the goods] of [here insert the name and address of the testator or intestate]; and whereas the matter of such application will be considered by the Judge

of this Court on the day of at the hour of in the
noon, I therefore request that you will cause to be produced before the
Judge on that day [the will (a), and] all documents which are in your pos-
session relating to the matter.

Dated this day of 187 .

Registrar of the Court.

Hours of attendance at the office of the registrar [*place of office*] from ten till four, except on _____ when the office will be closed at one.

[Stamp 40s.]

FORM D.

*Certificate of a Registrar of a County Court, under sect. 55 of 20 & 21
Vict. c. 77.*

(Seal.)

In the County Court of holden at
Between A. B., plaintiff,
[address]

and
C. D., defendant,
[address].

I, A. B., Registrar of the above Court, do hereby certify, that the following decree was made in the above cause.

[Here set out the decree.]

Certified under the seal of the Court, this day of 187 .
Registrar of the Court.

FORM E.

(Seal.)

In the County Court of holden at .
Between A. B., plaintiff,
and
C. D., defendant.

Upon the hearing of the application in this cause, at a Court holden this day, it is decreed as follows:

[Here set out the decree.]

and it is ordered, that the do pay the sum of for the
costs, and that the same be paid to the Registrar of this Court on the
day of 187 .

Given under the seal of this Court, this day of 187 .
By order of the Court,
Registrar.

Hours of attendance at the office of the Registrar [*place of office*] from ten till four, except on when the office will be closed at one.

[As the above forms will seldom be required, they are not to be printed, but are to be written on foolscap paper.]

N.B.—*The County Court has only jurisdiction in contentious matters.*

(a) To be left out where administration without will annexed has been granted.

Contentious
Business.

FORMS,

*Which are to be followed as nearly as the Circumstances
of each Case will allow.*

No. 1.—Citation to see Will proved.

In her Majesty's Court of Probate.

Victoria, by the grace of God of the United Kingdom of Great
Britain and Ireland Queen, Defender of the Faith.

To of in the county of .

This affidavit
must be made
by the plaintiffs
or one of them.

Whereas it appears by an affidavit of A. B. of sworn on
and filed in the Principal Registry of our Court of Probate, that the said
A. B. of claiming to be the executor of C. D., late of deceased,
who died on or about the day of 187 at intends to
prove in solemn form of law as well the alleged last will and testament of
the said deceased bearing date the day of as also the [first]
codicil thereto, bearing date the day of [and so on for any
other codicils], and that the said deceased died a bachelor without parent
[or as the case may be] and that you the said are the natural and
lawful and only next of kin of the said deceased, and the only person
entitled to his personal estate and effects [or as the case may be] in case
he be pronounced to have died intestate: Now this is to command you the
said that within eight days after service hereof on you, inclusive of
the day of such service, you do cause an appearance to be entered for you
in the Principal Registry of our Court of Probate, in support of any inter-
est you may have in the personal estate and effects of the said deceased:
And take notice, that in default of your so doing the Judge of our said
Court will proceed to hear the said will [and codicils] proved in solemn
form of law, and to pronounce sentence in regard to the validity of the
same, your absence notwithstanding.

Dated this day of 187 and in the year of our reign.
(Signed) E. F., Registrar.

Citation to see will proved.

Name of practitioner.

Indorsement to be made after service.

This citation was served by G. H. on the within-named of
at on the day of 187 .
(Signed) G. H.

No. 2.—Citation to bring in Probate.

In her Majesty's Court of Probate.

Victoria, by the grace of God of the United Kingdom of Great
Britain and Ireland Queen, Defender of the Faith.

To of in the county of .

This affidavit
must be made
by the plaintiffs
or one of them.

Whereas it appears by an affidavit of C. D. of sworn on
and filed in the Principal Registry of our Court of Probate, that probate.

of the alleged last will and testament [with codicils thereto] of A. B., late of deceased, was on or about the day of 187 , granted to you by our Court of Probate [*or at the District Registry attached to our Court of Probate at*]; and that the said deceased died a bachelor without parent [*or as the case may be*], and that the said C. D. is one of the natural and lawful brothers and next of kin of the said deceased, and one of the persons entitled in distribution to his personal estate and effects in case he shall be pronounced to have died intestate [*or interested under a former will bearing date, &c., or as the case may be*], and that the said probate ought to be called in, revoked, and declared null and void in law: now this is to command you, the said that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Principal Registry of our said Court the aforesaid probate, and further do show cause (if you should think it for your interest so to do) why the said probate should not be revoked and declared null and void in law, and the said will [and codicils] pronounced to be null and invalid.

Contentious
Business.

Dated this day of 187 , and in the year of our reign.
(Signed) E. F., Registrar.

Citation to bring in probate.

Name of the practitioner.

Indorsement to be made after service.

This citation was served by G. H. on the within-named of
at on the day of 187 .
(Signed) G. H.

No. 3.—*Citation to bring in Administration.*

In her Majesty's Court of Probate.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of in the county of

Whereas it appears by an affidavit of A. B. of sworn on and filed in the Principal Registry of our Court of Probate, that C. D., late of deceased, died on at and that on the letters of administration of the personal estate and effects of the said deceased, on the suggestion that he had died intestate, were granted to you by the authority of our Court of Probate as the and next of kin of the said deceased, and that it has since been discovered that the said C. D. made and duly executed his last will and testament, dated and thereof appointed executors [*or as the case may be*], and that the said letters of administration ought to be called in, revoked, and declared null and void in law: now this is to command you, the said that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Principal Registry of our said Court the said letters of administration, and further do show cause (if you should think it for your interest so to do) why the same should not be revoked and declared null and void.

This affidavit
must be made by
the plaintiffs or
one of them.

Dated this day of 187 , and in the year of our reign.
(Signed) E. F., Registrar.

Citation to bring in administration.

Name of practitioner.

Indorsement to be made after service.

This citation was served by G. H. on the within-named of
at on the day of 187 .
(Signed) G. H.

B.

M M

Contentious
Business.No. 4.—*Citation to see Proceedings.*

In her Majesty's Court of Probate.

Victoria, by the grace of God of the United Kingdom of Great Britain
and Ireland Queen, Defender of the Faith.

To _____ of _____ in the county of _____

This affidavit
must be made by
the party on
whose behalf the
citation is ex-
tracted.

If heir-at-law
recite briefly the
order on motion.

Whereas it appears by an affidavit of _____ sworn on the _____ day of 187 _____ and filed in the Principal Registry of our Court of Probate, that there is now depending in our said Court a cause entitled A. B. v. C. D., wherein the said _____ is proceeding to prove in solemn form of law the alleged last will and testament with _____ codicils thereto, of E. F., late of deceased, who died on or about the _____ day of _____ at _____ :

And whereas it appears by the said affidavit that you are the natural and lawful _____ and one of the next of kin of the deceased, and a party entitled in distribution to the personal estate and effects of the deceased in case he should be pronounced to have died intestate [*or interested under a former will of the said deceased, bearing date, &c., or as the case may be.*] Now this is to give notice to you, the said _____ to appear in the said cause, either personally or by your proctor, solicitor, or attorney, should you think it for your interest so to do, at any time during the dependence of the said cause, and before final judgment shall be given therein : and take notice, that in default of your so doing the Judge of our said Court of Probate will proceed to hear the said will [*and codicils*] proved in solemn form of law, and pronounce judgment in the said cause, your absence notwithstanding.

Dated this _____ day of _____ and in the _____ year of our reign.

(Signed) E. F., Registrar.

Citation to see proceedings.

*Name of the practitioner.**Indorsement to be made after service.*

This citation was served by G. H. on _____ of _____ at _____ on the _____ day of 187 _____.

(Signed) G. H.

No. 5.—*Præcipe for Citation.*

In her Majesty's Court of Probate.

Citation [*or citation to see proceedings*] for A. B. against C. D., in a matter of proving in solemn form of law the last will and testament with _____ codicils of E. F., late of _____ in the county of, &c., deceased [*or generally describing the nature of the suit*].

P. A., proctor, solicitor *or* attorney
for [*or A. B. in person*]. [*Add
an address within three miles of
the General Post Office.*]

The _____ day of _____ 187 _____.

No. 6.—*Declaration.*

In her Majesty's Court of Probate.

The _____ day of _____ 187 _____.

A. B. [*or A. B., by C. D., his proctor, solicitor, or attorney*] saith, that E. F., late of _____ deceased, who died on or about the _____ day of _____

at being of the age of twenty-one years and upwards, made his last will and testament, with codicils thereto, bearing date, to wit, the said will on the day of 187 the first of the said codicils on the day of 187 [and so on for any other codicils], and in the said will appointed the said A. B. sole executor [or as the case may be]; that the said will and codicils respectively, after having been reduced into writing, were signed by the said testator [or signed by G. H. in the presence and by direction of the testator, or signed by the testator who acknowledged his signature thereto, or as the case may be], in the presence of two witnesses present at the same time, and who subscribed the same in the presence of the said testator, and whose names severally appear upon the said will and codicils; and that the said testator was at the time of the execution of the said will and codicils respectively of perfect sound mind, memory, and understanding.

(Notice where the Defendant appears.)

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain probate of the said will and codicils [or as the case may be].

No. 7.—*Declaration in an Interest Cause.*

In her Majesty's Court of Probate.

The day of 187 .

A. B. [or A. B. by C. D., his proctor, solicitor, or attorney] saith, that E. F., late of deceased, died on or about the day of 187 at intestate [or as the case may be] a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece, leaving the said A. B. his lawful cousin german and one of his next of kin [or as the case may be].

(Notice.)

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain letters of administration of the personal estate and effects of the said deceased [or as the case may be].

No. 8.—*Plea.*

In her Majesty's Court of Probate.

The day of 187 .

G. H. [or G. H. by I. Z., his proctor, solicitor, or attorney] saith, that the paper writing bearing date the day of 187 and alleged by the plaintiff to be the last will and testament of A. B., late of in the county of deceased [or the first or any other codicil thereto], was not executed according to the provisions of 1 Vict. cap. 26 [or that A. B., the deceased in this cause at the time his alleged will [or codicil] bears date, to wit, on the day of 187 was not of sound mind, memory and understanding], [or any other averment in opposition to the will or codicil propounded].

No. 9.—*Plea in an Interest Cause.*

In her Majesty's Court of Probate.

The day of 187 .

G. H. [or G. H. by I. K., his proctor, solicitor or attorney] saith, that A. B., the plaintiff, is not the lawful cousin german of E. F., who died on

No. 12.—*Notice as to Mode of Trial.*

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In her Majesty's Court of Probate.

A. B. v. C. D.
To of .

Take notice, that after the expiration of eight clear days from the service hereof, to wit, on the day of 187 or on the next Court day on which the application can be made, the { plaintiff } { defendant } in this cause intends to apply to the Court to hear this cause without a jury [or to try the questions at issue before itself by a common or special jury], [or to direct the questions at issue to be tried before the Judge of Assize by a special or common jury at the next assizes to be holden in and for the county of], [or as the case may be].

Dated this day of 187 .

(Signed) { A. B. }
{ C. D. }
or E. F., proctor, solicitor, or attorney
for { A. B. }
{ C. D. }

No. 13.—*Record.*

In her Majesty's Court of Probate.

The day of 187 .

A. B. v. C. D.

A. B., by E. F., his proctor, solicitor, or attorney [or in person], having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. [or according to the terms of the citation], [or A. B., by E. F., his proctor, solicitor, or attorney [or in person], having warned the caveat entered by C. D. in the estate and effects of G. H.,] late of deceased, who died on or about the day of 187 at the said C. D. appeared thereto personally [or by his proctor, solicitor, or attorney]: Whereupon to wit, on the day of 187 did deliver his declaration to the said in the words and figures following:

[Here insert declaration at length.]

Whereupon the said did deliver, to wit, on the day of to the said his plea in the words and figures following:

[Here insert at length plea and any further pleadings.]

Therefore claimed that the cause should be tried as the Court should direct.

Whereupon the Judge did order as follows:

[Here set forth the direction as to the mode of hearing or trial.]

No. 14.—*Record in case of Party cited not appearing.*

In her Majesty's Court of Probate.

The day of 187 .

A. B. v. C. D.

A. B., by E. F., his proctor, solicitor or attorney [or in person], having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. [or according to the terms of the citation], late of deceased, who died on or about the day of 187 at

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the said C. D. did not in anywise appear thereto: Whereupon, in default of appearance of the said C. D., the said A. B. did file his declaration in the Principal Registry in the words and figures following:

[*Here insert declaration at length.*]

Therefore A. B. claimed that the cause should be tried as the Court should direct:

Whereupon the Judge did order as follows:

[*Here set forth the direction as to the mode of trial.*]

No. 15.—*Form of Questions for the Jury.*

In her Majesty's Court of Probate.

A. B. v. C. D.

Whereas A. B., the { plaintiff } avers, and C. D., the { defendant }
denies that [*here set out each question at issue between the parties, and repeat the form as often as may be necessary; and conclude.*]

Therefore let a jury come.

No. 16.—*Subpœna ad testificandum.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, To [*names of all witnesses included in the subpœna*], greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before [*insert the name of the Judge*], Judge of our Court of Probate at our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard or tried, to testify the truth according to your knowledge in a certain cause now in our Court before our said Judge depending, between plaintiff, and defendant [*or in a certain cause or proceeding now in our Court before our said Judge depending, in default of appearance of parties cited, entitled*], on the part of the [*plaintiff, defendant, or as the case may be*], and at the aforesaid day, between the parties aforesaid, to be heard or tried [*or in default aforesaid, between the parties aforesaid, to be heard*]; and this you nor any of you shall in nowise omit, under the penalty of every of you of 100*l.* Witness [*insert the name of the Judge*], at the Court of Probate, the day of in the year of our reign.

(Signed) E. F., Registrar.

Name of the practitioner and address.

No. 17.—*Subpœna duces tecum.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, To [*names of all parties included in the subpœna*], greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before [*insert the name of the Judge*], Judge of our Court of Probate at our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard or tried, and also that you bring with you, and produce at the

time and place aforesaid [*here describe shortly the deeds, letters, papers, &c. required to be produced*], then and there to testify and show all and singular those things which you or either of you know or the said deed or instrument doth import of and concerning a certain cause or proceeding now in our said Court before our said Judge depending, between plaintiff, and defendant [*or a certain cause or proceeding now in our said Court before our said Judge depending, in default of appearance of parties cited, entitled*], on the part of the [*plaintiff or defendant, or as the case may be*], and at the aforesaid day between the parties aforesaid to be heard or tried. And this you nor any of you shall in nowise omit, under the penalty of every of you of 100*l.* Witness [*insert the name of the Judge*], at the Court of Probate, the day of 18 in the year of our reign.

(Signed) E. F., Registrar.

Name of the practitioner and address.

No. 18.—*Præcipe for Subpœna ad testificandum.*

In her Majesty's Court of Probate.

A. B. v. C. D.

Subpœna for to testify between A. B. plaintiff, and C. D. defendant, on the part of the plaintiff [*or defendant*], the day of 18 .

(Signed) { A. B. } or { P. A., plaintiff's [*or defendant's*] }
 { C. D. } proctor, solicitor *or* attorney.

No. 19.—*Præcipe for Subpœna duces tecum.*

In her Majesty's Court of Probate.

A. B. v. C. D.

Subpœna for to testify and prodnce, &c. between A. B. plaintiff, and C. D. defendant, on the part of the plaintiff [*or defendant*], the day of 18 .

(Signed) { A. B. } or { P. A., plaintiff's [*or defendant's*] }
 { C. D. } proctor, solicitor *or* attorney.

No. 20.—*Notice to admit Documents.*

In her Majesty's Court of Probate.

A. B. v. C. D.

Take notice, that the { plaintiff } in this cause proposes to adduce
 { defendant }
in evidence the several documents hereunder specified, and that the same
may be inspected by the { defendant } at on between the
 { plaintiff }
hours of and the { defendant } is hereby required, within forty-
 { plaintiff }
eight hours from the last-mentioned hour, to admit that such of the said
documents as are specified to be originals were respectively written, signed,
or executed as they purport respectively to have been, that such as are
specified to be copies are true copies, and such documents as are stated to
have been served, sent or delivered were so served, sent or delivered re-

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spectively, saving all just exceptions to the admissibility of all such documents as evidence in the cause. Dated, &c.

To { A. B. } or to E. F., proctor or solicitor { defendant.
 { C. D. } or attorney for { plaintiff.
 (Signed) { C. D. } or G. H., proctor or solicitor { plaintiff.
 { A. B. } or attorney for { defendant.

[Here describe the documents. The same form may be employed in describing the documents as is now in use in the common law courts.]

No. 21.—*Subpœna to bring in a Script decreed by the Court.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of .

Whereas there is now proceeding in our Court of Probate a certain business of proving in solemn form of law the last will and testament of A. B. late of deceased, who died on or about at the said will bearing date the day of 18 promoted by C. D., the sole executor [or as the case may be] therein named, against E. F., the natural and lawful brother and one of the next of kin of the said deceased [or as the case may be]: And whereas the Right Honourable the Judge of our said Court did, by his order made in the said cause, and bearing date order and direct that a subpœna do issue, under seal of our said Court, to the purport and effect hereinafter mentioned: Now this is to command you, that, within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Principal Registry of our said Court, a certain original paper writing or script purporting to be testamentary, to wit [here describe the script accurately], if the same be now in your possession or under your control: or in case the said paper writing or script be not in your possession, or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in the Principal Registry of our said Court an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said paper writing or script; and this you shall in nowise omit, under the penalty of 100*l*. Witness [insert the name of the Judge], at the Court of Probate, the day of 18 in the year of our reign.

(Signed) E. F., Registrar.

Name of the practitioner and address.

Indorsement to be made after service.

This subpœna was served by I. K. on the within-named of
 at on the day of 18 .
 (Signed) I. K.

No. 22.—*Subpœna to a Witness to be examined touching a Testamentary Paper of which he is supposed to have knowledge.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of greeting. We command you, that, all other things set aside, and ceasing every excuse, you do appear before A. B., the Judge of our Court of Probate, at our Court of Probate, at on the day of 187 by of the clock in the forenoon of the same day, and

so from day to day until you be dismissed by our said Judge, to testify the truth according to your knowledge [or to answer to certain interrogatories to be administered to you], touching a certain paper writing or script, being or purporting to be testamentary, to wit [here describe the script, and give its date as accurately as possible], of which said paper, writing or script reasonable grounds have been furnished to our said Judge for believing that you have knowledge. And this you shall in nowise omit, under the penalty of 100*l*. Witness [insert the name of the Judge], at the Court of Probate, the day of 187 in the year of our reign.

E. F., Registrar.

Name of the practitioner and address.

Indorsement to be made after service.

This subpœna was served by I. K. on the within-named on the
day of 187 .

(Signed) I. K.

No. 23.—*Præcipe for Subpœna to a Witness to bring in a Script.*

In her Majesty's Court of Probate.

A. B. v. C. D.

Subpœna for W. W. to bring into and leave in the Principal Registry.

[Here accurately describe the script.]

The day of 187 .

(Signed) { A. B. } or { P. A., plaintiff's [or defendant's] proctor,
 { C. D. } solicitor, or attorney.

No. 24.—*Præcipe for Subpœna to a Witness to be examined touching a Testamentary Paper of which he is supposed to have knowledge.*

In her Majesty's Court of Probate.

Subpœna for W. W. to testify respecting a paper writing or script being or purporting to be testamentary, to wit [describing it], of which he is supposed to have knowledge, on the part of this day of
187 .

(Signed) { A. B. } or { P. A., plaintiff's [or defendant's] proctor,
 { C. D. } solicitor, or attorney.

No. 25.—*Entry on the Record of a Verdict.*

Afterwards, on the day of 187 before the Judge of her Majesty's Court of Probate, come the parties within mentioned, by their respective attorneys [or as the case may be] within mentioned, and a jury duly summoned also come, who, being sworn to try the matters in question between the parties, upon their oath say, that [state the affirmative or negative of the issue, as found for the plaintiff or defendant, and in the terms adopted in the questions for the jury].

[If there be several issues joined and tried, then say] as to the first issue within joined upon their oath say, that [here state the affirmative or

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negative of the issue, as found for plaintiff or defendant], and as to the second issue within joined, the jury aforesaid upon their oath say, &c. [*so proceed to state the finding of the jury on all the issues*]; whereupon the Judge decreed [*here set forth the tenor of the decree*].

(Signed) A. B., Registrar.

No. 26.—*Entry on the Record of a Judgment.*

Afterwards, on the day of 187 before the Judge of her Majesty's Court of Probate, come the parties within mentioned, by their respective attorneys [*or as the case may be*] within mentioned: whereupon the Judge decreed [*here insert the tenor of the decree*].

(Signed) A. B., Registrar.

No. 27.—*Inventory.*

A true, full, and particular inventory of all and singular the personal estate and effects of A. B., late of deceased, which have at any time since his death come to the hands, possession, or knowledge of C. D., the sole executor named in the last will and testament of the said A. B. [*or administrator of the said personal estate and effects, as the case may be*], made and exhibited upon and by virtue of the corporal oath [*or solemn affirmation*] of the said C. D., follows, to wit:

First, this exhibitant saith, that the said deceased was at £ s. d.
the time of his death possessed of

[*The details of the deceased's effects must be here inserted in as many sheets of paper as may be necessary, and the value inserted opposite to each particular.*]

Lastly, this exhibitant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this exhibitant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of 187 the said C. D. was duly sworn to [*or solemnly, sincerely, and truly declared and affirmed, according to the form of words prescribed by the statute applicable to the particular case*] the truth of the above inventory, at .

Before me,

[*person authorized to administer oaths under the act.*]

No. 28.—*Petition.*

In her Majesty's Court of Probate.

A. B. v. C. D.

The day of 187 .

A. B. [*or E. F., proctor, solicitor, or attorney for A. B.*] the plaintiff says, that

[*Here insert all the facts which are to be alleged:*]

Wherefore the said A. B. prays, that

[*Here end with the prayer of the plaintiff.*]

(Signed) A. B. or C. D.

Answer.

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In her Majesty's Court of Probate.

A. B. v. C. D.

The day of 187 .

C. D. [*or* G. H., proctor, solicitor, *or* attorney for C. D.] the defendant says, that

[*Here insert the facts to be alleged in answer.*]

Wherefore the said C. D. prays, that

[*Here insert the prayer of the defendant.*]

(Signed) C. D. *or* G. H.

The reply, rejoinder, &c. (if any such be necessary) are to be in the same form.

No. 29.—*Notice of Appeal.*

A. B. v. C. D.

Notice is hereby given that the { defendant } in a suit lately depending
in her Majesty's Court of Probate, entitled A. B. v. C. D., has in due time
and place appealed against a certain final order or decree made in the said
cause by the Right Honourable the Judge of the said Court on the
day of 187 ; whereby, amongst other things, he did order and decree
[*here set forth the matters which are the subject of the appeal.*]

(Signed) C. D. [*or* G. H., proctor, solicitor, *or* attorney for
C. D., the defendant, *or as the case may be.*]

This day of 187 .

No. 30.—*Bond to be executed by a Receiver of Real Estate
pending Suit.*

Know all men by these presents, that we, A. B. of C. D. of
and E. F. of are jointly and severally bound unto the Right Honour-
able the Judge of her Majesty's Court of Probate, in the sum of
pounds of good and lawful money of Great Britain, to be paid to the
said Right Honourable or to the Judge of the said Court for the time
being, for which payment well and truly to be made we bind ourselves and
every of us for the whole, our heirs, executors and administrators, firmly by
these presents. Sealed with our seals. Dated the day of in
the year of our Lord one thousand eight hundred and seventy-

Whereas G. H., late of died on the day of 187 at

having, as asserted, made and duly executed { his } last will and
testament, with codicil thereto, bearing date respectively the [*here insert
dates of the testamentary papers*]: And whereas there is now pending in
judgment in her Majesty's Court of Probate a certain cause or suit instituted
by I. J., as one of the executors named in the said will, against K. L., the
natural and lawful and only next of kin of the said deceased, touching
and concerning the validity of the said will and codicil, in which said cause
or suit M. N., as the heir-at-law of the said G. H., has been cited to see
proceedings, and has entered an appearance, and become a party to the
said cause or suit: And whereas the Right Honourable the Judge

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aforesaid, did, on the day of 187 after hearing counsel for and on behalf of all parties to the said cause or suit, appoint the above-bounden A. B. as and to be receiver of the real estate of the said G. H. pending the said cause or suit:

Now the condition of this obligation is such, that if the above-bounden A. B., the receiver of the real estate of the said G. H. pending the aforesaid cause or suit, do make a true and perfect inventory of all the rents, issues, and profits of the said real estate which have or shall come to his hands, possession or knowledge, or into the hands, possession or knowledge of any other person for him, and the same so made do exhibit, or cause to be exhibited, into the Principal Registry of her Majesty's Court of Probate, when lawfully required so to do, and the same rents, issues and profits do well and truly pay and appropriate according to law, that is to say, in payment and satisfaction of all charges and expenses which are or may be or become legally charged upon and payable out of the said rents, issues and profits, and in the letting and managing the said real estate, and in performing other the duties committed to him by the Judge aforesaid, and further do make or cause to be made a true and just account of his administration of the said rents, issues and profits, which shall be allowed by the said Court, and all the rest and residue of the said rents, issues and profits to deliver and pay under the direction of the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

(Signed) A. B. (L.S.)
 C. D. (L.S.)
 E. F. (L.S.)

Signed, sealed and delivered by the within-named in the presence of P. Q., a clerk in the Principal Registry, or a commissioner or surrogate authorized to administer oaths in the Court of Probate.

The following Forms are PRECEDENTS IN CONTENTIOUS BUSINESS, and used in the Principal Registry, though not given in the authorized Forms.

Order on Summons.

In her Majesty's Court of Probate.

Smith against Jones & others.

Upon hearing the agents on both sides, and upon reading the affidavit of George Broom, sworn the 24th day of January, 1870, I do order that a commission do issue under seal of this Court for the examination (*vivâ voce* and by interrogatories) of James Simpson, Esquire, Queen's counsel of Toronto in Upper Canada and others, witnesses to be produced by the defendants Thurlow Jones and Charlotte Bazette Jones his wife, in support of the same such commission to be addressed to

and that the plaintiff be at liberty to join in the said commission, such commission to be returned into the Registry of this Court within two months from its date.

Dated the 25th day of January, 1870.

PENZANCE.

In her Majesty's Court of Probate.

Smith v. Jones & others.

I do order that a commission issue in this cause at the instance of the defendants directed to _____ of Toronto in Upper Canada, a commissioner on the part of the defendants for the examination of James Simpson, Esq., Queen's counsel of Toronto aforesaid, and such other witnesses as may be produced by the defendants and by the plaintiff in this cause upon interrogatories, and *vivâ voce* on oath or affirmation according to their several religions. And I do further order that copies of the interrogatories in chief to the witnesses James Simpson and others, shall be delivered by the defendants to the plaintiff's attorneys, and that within a week thereof cross interrogatories to the said interrogatories shall be delivered by plaintiff's attorneys to defendants' attorneys. And I do further order that if the plaintiff shall be desirous of having the said commission directed also to a commissioner on her part, the said commission shall be so directed accordingly on the plaintiff furnishing to the defendants' attorneys or agents, within a week from the date hereof, the name and addition of her commissioner for the purpose. And I further order that the said commission shall be executed at Toronto aforesaid, and that seven days previously to the examination of any witness or witnesses by virtue of this order under the said commission, notice in writing containing the name and description or names and descriptions of the witness or witnesses intended to be examined, and the place and hour of such intended examination, under the hand of the said commissioner, shall be given to the commissioner of the plaintiff if one shall be named as aforesaid, and if such commissioner of the plaintiff having received such notice shall neglect or decline to attend pursuant to such notice, then and

in such case the said commissioner of the defendant shall proceed *ex parte* in the absence of the plaintiff's commissioner. And I further order that the said defendants' commissioner shall be at liberty, if he shall see reasonable occasion after the commencement of the examination under the commission to be issued by virtue of this order, to adjourn any meeting or meetings, or to continue the same *de die in diem*, until the whole of the witnesses proposed to be examined shall have been examined, without giving any further or other notice of such subsequent meeting or meetings, than notice to be given on the occasion of such adjournment or continuation of the meeting. And I further order that the commissioner appointed on behalf of the plaintiff shall be at liberty, if he shall think fit, to call witnesses on behalf of the plaintiff, on giving to the defendants' commissioner notice in writing within seven days after the close of the examination of the witnesses on defendants' behalf, that it is his intention to examine and take the evidence of witnesses on behalf of the plaintiff, and that thereupon the said commissioner on defendants' behalf shall forthwith give notice to the commissioner on plaintiff's behalf, appointing a place and hour for the examination of the said witnesses to be called on plaintiff's behalf. And I further order that the depositions and affirmations taken under and by virtue of this order shall be subscribed by the witness or witnesses, and that the depositions and affirmations shall also be subscribed by the said defendants' commissioner and the plaintiff's commissioner, if any, who shall have taken the same, and that all books, letters, papers and documents produced in evidence shall be marked as exhibits by the said commissioner or commissioners. And I further order that it shall not be necessary to send and return with the said commission, depositions and affirmations, the original of any books which may have been given or offered in evidence, but that copies or extracts from such books to be verified on oath, and certified by the said commissioner or commissioners as correct copies shall and may be exhibited, and may be given in evidence on the trial of this cause in lieu of such original books, saving all just exceptions. And I further order that it shall not be necessary to annex to the said commission depositions or affirmations, or to return with the same to the Principal Registry of this Honorable Court hereinafter mentioned, any documents, letters, or other papers (with the exception of alleged wills or script) produced before or read in evidence by the said commissioner or commissioners, and referred to in the evidence of any witness or witnesses under or by virtue of the commission to be issued in pursuance of this order, but that copies of the same respectively shall be verified on oath as correct copies of original documents, and certified under the hands of the said commissioner or commissioners as being the document or documents mentioned in such evidence, and as being correct copies of the originals, and referred to as being marked with the letter "A," or with any other letter or letters respectively, or in any other manner as to the said commissioner or commissioners may seem meet, and that all documents, letters and papers, with the exception of alleged wills or script, upon being produced annexed to the said commission, and purporting to be so verified and certified and returned as aforesaid, may, if required, be given and read in evidence on the trial of this cause in lieu of the originals without proof of the certificates being written or signed by the acting commissioners, and without further proof of such copies purporting to be verified and certified, or any of them being the same as are respectively referred to in the depositions and affirmations or any of them, saving all just exceptions which might have been taken to the originals, if produced, and proved in the ordinary manner, and saving the right of either party to prove that the copies or extracts so purporting to be verified and certified, or any of them, were or was not so certified and verified. And I further order that all alleged wills or script which may be given in evi-

dence by any of the witnesses to be examined under the said commission, shall be annexed to the depositions or affirmations of the said witnesses taken under the said commission, and shall be certified under the hands of the said commissioner or commissioners as being the document referred to in such evidence, and as being referred to and marked with the letter "A," or with any other letter or letters respectively, or in any other manner as to the said commissioner or commissioners may seem meet, and that all such alleged wills or script shall be returned annexed to the said commission, depositions or affirmations, and shall be returned to the Principal Registry of this Honorable Court. And I do further order that the said commission, together with the depositions, affirmations and exhibits which shall be made, exhibited, and taken by virtue of this order, shall be returned to and filed in the Principal Registry of this Court under the signature and seals of the said commissioner or commissioners on or before the 1st day of July, 1870, or on or before such further or ulterior day as may be ordered by me, and that office copies thereof, and of all letters, papers and documents so marked as exhibits, and copies and extracts from books so respectively certified and verified as aforesaid, shall or may be given and read in evidence on the trial of this cause, saving all just exceptions to the admissibility of the evidence without any other proof of the absence out of this country of the witness or witnesses therein mentioned than the evidence of the attorney or agent, or one of the attorneys or agents of the defendants, or of the plaintiff of his belief of the absence out of the jurisdiction of this Court of such witness or witnesses.

Dated the 17th day of May, 1870.

As altered in red ink we approve of this order.

EVANS & EDWARDS,
21st May, 1870.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, To John Thomas, Esquire, and William Evans, Esquire, barristers-at-law, both of Toronto in Upper Canada, commissioners respectively named by or on the part of the defendants hereinafter mentioned; and Patrick Dale of the town of Chatham, in the county of Kent and province of Ontario, barrister-at-law, commissioner named by or on behalf of the plaintiff, hereinafter mentioned jointly and severally greeting. Whereas a certain cause is now depending in our Court of Probate wherein Rosa Smith, wife of John Smith, is plaintiff; and Charlotte Bazette Jones, wife of Thurlow Jones, and the said Thurlow Jones are defendants. And whereas by an order made in the said cause on the 25th day of January, 1870, it was ordered that a commission should issue under seal of our said Court to the effect and purpose hereinafter mentioned.

Now know ye that we do by virtue of commission to you directed, authorize you the said John Thomas and William Evans, commissioners on the part of the defendants, or one of you, within ten days after receipt of this commission, at a certain time and place in Toronto aforesaid, to be by you, or one of you, appointed for that purpose to take the examination of James Simpson, Esquire, Queen's counsel, and such other witnesses as may be produced by the defendants and by the plaintiff in this cause, upon interrogatories and *vivâ voce* on oath or affirmation according to their several religions, and that seven days previously to the examination of any

witness or witnesses under this commission, notice in writing containing the name and description or names and descriptions of the witness or witnesses intended to be examined, and the place and hour of such intended examination under the hand of you the said John Thomas and William Evans or one of you, shall be given to you the said Patrick Dale, the commissioner on the part of the plaintiff, and if the said Patrick Dale having received such notice shall neglect or decline to attend pursuant to such notice, then and in such case you the said John Thomas and William Evans, or one of you, shall proceed in the absence of the said Patrick Dale. And we further authorize you the said John Thomas and William Evans, or one of you, if you shall see reasonable occasion after the commencement of the examination under this commission, to adjourn any meeting or meetings, or to continue the same *de die in diem* until the whole of the witnesses proposed to be examined shall have been examined without giving any further or other notice of such subsequent meeting or meetings than notice to be given on the occasion of such adjournment or continuation of the meeting. And we do authorize you the said Patrick Dale, if you shall think fit, to call witnesses on behalf of the plaintiff, on giving to the said John Thomas and William Evans notice in writing within seven days after the close of the examination of the witnesses on defendants' behalf that it is your intention to examine and take the evidence of witnesses on behalf of the plaintiff, and that thereupon you the said John Thomas and William Evans, or one of you, shall forthwith give notice to the said Patrick Dale, appointing a place and hour for the examination of the said witnesses to be called on plaintiff's behalf. And we do command that the depositions and affirmations taken under and by virtue of this commission, shall be subscribed by the witness or witnesses, and that the depositions and affirmations shall also be subscribed by you, or one of you, who shall have taken the same, and that all books, letters, papers and documents produced in evidence shall be marked as exhibits by you. And that it shall not be necessary to send and return with the said commission, depositions and affirmations, the original of any books which may have been given or offered in evidence, but that copies or extracts from such books to be verified on oath, and certified by you, or one of you, as correct copies shall and may be exhibited, and may be given in evidence on the trial of this cause in lieu of such original books saving all just exceptions. And that it shall not be necessary to annex to the said commission, depositions or affirmations, or to return with the same to the Principal Registry of our Court of Probate hereinafter mentioned, any documents, letters or other papers (with the exception of the alleged wills or scripts) produced before or read in evidence by you, and referred to in the evidence of any witness or witnesses under and by virtue of this commission, but that copies of the same respectively shall be verified on oath as correct copies of original documents, and certified under the hands of you, or one of you, as being the document or documents mentioned in such evidence, and as being correct copies of the originals, and referred to as being marked with the letter "A," or with any other letter or letters respectively, or in any other manner as to you may seem meet. And we do further command that all alleged wills or scripts which may be given in evidence by any of the witnesses to be examined under this commission, shall be annexed to the depositions or affirmations of the said witnesses taken under this commission, and shall be certified under the hands of you, or one of you, as being the document referred to in such evidence, and as being referred to and marked with the letter "A," or with any other letter or letters respectively, or in any other manner as to you may seem meet, and that all such alleged wills or scripts shall be annexed to this commission with the depositions or affirmations taken thereunder. And we do further command that this commission, together with the depositions,

affirmations and exhibits which shall be made, exhibited and taken by virtue of this commission, shall be returned to and filed in the Principal Registry of our said Court, under the signatures and seals of you, or one of you, on or before the day of 1870, or on or before such further or ulterior day as may be ordered.

Dated at London this day of 1870, and in the thirty-third year of our reign.

Citation to examine witnesses,

Registrar.

STYLES & Co., Proctors and Solicitors,

7, Godliman Street, Doctors' Commons.

London.

APPENDIX III.

DUTIES ON PROBATES

Of Wills and Letters of Administration; on Confirmations of Testaments, testamentary and dative; on Inventories to be exhibited in the Commissary Courts in Scotland; and on Legacies out of Real or Personal, Heritable or Moveable Estate; and on Successions to Personal or Moveable Estates upon Intestacy, imposed by 55 Geo. III. c. 184, s. 3; 22 & 23 Vict. c. 36, s. 1, and 27 & 28 Vict. c. 56, s. 4.

Probate of a will, and letters of administration with a will annexed, to be granted in England; £ s. d.

Confirmation of any testament testamentary or eik thereto, to be expedited in any commissary court in Scotland, where the deceased shall have died before or upon the 10th day of October, 1808, and subsequent to the 10th day of October, 1804;

Inventory to be exhibited and recorded in any commissary court in Scotland, of the estate and effects of any person deceased, who shall have died after the 10th day of October, 1808, and have left any testament or testamentary disposition of his or her personal or moveable estate and effects, or any part thereof;

Where the estate and effects for or in respect of which such probate, letters of administration, confirmation or eik respectively shall be granted or expedited, or whereof such inventory shall be exhibited and recorded, inclusive of Indian Government promissory notes, certificates and stock, and of ships and shares of ships registered at any port of the United Kingdom (a); and, where the deceased shall have died on or since the 3rd of April, 1860, inclusive also of all personal or moveable estate and effects disposed of by his will under any authority enabling him to dispose of the same as he shall think fit, and inclusive also of money secured on heritable property in Scotland, and money secured by Scotch bonds in favour of heirs and assigns, excluding executors; [*but exclusive of what the deceased shall have been possessed of or entitled to*]

(a) By 27 & 28 Vict. c. 56, s. 4, which received the royal assent on the 25th of July, 1864, it is enacted that the said stamp duties shall be charged and paid in respect of the value of any ship or share of any ship belonging to any deceased person which shall be registered at any port of the United Kingdom, not-

withstanding such ship, at the time of the death of the testator or intestate, may have been at sea or elsewhere out of the United Kingdom; and for the purpose of charging the said duties, such ship shall be deemed to have been at the time aforesaid in the port at which she may be registered.

as a trustee for any other person or persons, and not beneficially,] shall be—

		£	s.	d.
Above the value of £20 and under the value of £100 (b) ..		0	10	0
Of the value of £100 and under the value of 200	200	2	0	0
" 200	300	5	0	0
" 300	450	8	0	0
" 450	600	11	0	0
" 600	800	15	0	0
" 800	1,000	22	0	0
" 1,000	1,500	30	0	0
" 1,500	2,000	40	0	0
" 2,000	3,000	50	0	0
" 3,000	4,000	60	0	0
" 4,000	5,000	80	0	0
" 5,000	6,000	100	0	0
" 6,000	7,000	120	0	0
" 7,000	8,000	140	0	0
" 8,000	9,000	160	0	0
" 9,000	10,000	180	0	0
" 10,000	12,000	200	0	0
" 12,000	14,000	220	0	0
" 14,000	16,000	250	0	0
" 16,000	18,000	280	0	0
" 18,000	20,000	310	0	0
" 20,000	25,000	350	0	0
" 25,000	30,000	400	0	0
" 30,000	35,000	450	0	0
" 35,000	40,000	525	0	0
" 40,000	45,000	600	0	0
" 45,000	50,000	675	0	0
" 50,000	60,000	750	0	0
" 60,000	70,000	900	0	0
" 70,000	80,000	1,050	0	0
" 80,000	90,000	1,200	0	0
" 90,000	100,000	1,350	0	0
" 100,000	120,000	1,500	0	0
" 120,000	140,000	1,800	0	0
" 140,000	160,000	2,100	0	0
" 160,000	180,000	2,400	0	0
" 180,000	200,000	2,700	0	0
" 200,000	250,000	3,000	0	0
" 250,000	300,000	3,750	0	0
" 300,000	350,000	4,500	0	0
" 350,000	400,000	5,250	0	0
" 400,000	500,000	6,000	0	0
" 500,000	600,000	7,500	0	0
" 600,000	700,000	9,000	0	0
" 700,000	800,000	10,500	0	0
" 800,000	900,000	12,000	0	0
" 900,000	1,000,000	13,500	0	0

(b) No stamp duty shall be chargeable on any such probate, letters of administration or inventory as aforesaid, in any case where the whole estate and effects of the deceased person dying after the passing of this act (25th of July, 1864), exclusive

of what he shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, shall be sworn not to exceed and shall actually not exceed in value 100*l.* 27 & 28 Vict. c. 56, s. 5.

Of the value of £1,000,000 and upwards; for every £100,000 of the whole value of such estate and effects, and any fractional part of £100,000 (c) .. 15,000 0 0

Letters of administration.

Letters of administration, without a will annexed, to be granted in England;

Confirmation of any testament dative, to be expedited in any commissary court in Scotland, where the deceased shall have died before or upon the 10th day of October, 1808, and subsequent to the 10th day of October, 1804;

Inventory to be exhibited and recorded in any commissary court in Scotland of the estate and effects of any person deceased who shall have died after the 10th day of October, 1808, without leaving any testament or testamentary disposition of his or her personal or moveable estate or effects or any part thereof;

Where the estate and effects for or in respect of which such letters of administration or confirmation respectively shall be granted or expedited, or whereof such inventory shall be exhibited and recorded, inclusive of Indian Government notes, certificates and stock, and of money secured in heritable property in Scotland, and money secured by Scotch bonds in favour of heirs and assigns, excluding executors, and of ships and shares of ships registered in any port of the United Kingdom, [*but exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially,*] shall be—

Above the value of £20 and under the value of £50	..	0	10	0
Of the value of £50 and under the value of £100	..	1	0	0
" " 100	..	3	0	0
" " 200	..	8	0	0
" " 300	..	11	0	0
" " 450	..	15	0	0
" " 600	..	22	0	0
" " 800	..	30	0	0
" " 1,000	..	45	0	0
" " 1,500	..	60	0	0
" " 2,000	..	75	0	0
" " 3,000	..	90	0	0
" " 4,000	..	120	0	0
" " 5,000	..	150	0	0
" " 6,000	..	180	0	0
" " 7,000	..	210	0	0
" " 8,000	..	240	0	0
" " 9,000	..	270	0	0
" " 10,000	..	300	0	0
" " 12,000	..	330	0	0
" " 14,000	..	375	0	0
" " 16,000	..	420	0	0
" " 18,000	..	465	0	0
" " 20,000	..	525	0	0
" " 25,000	..	600	0	0
" " 30,000	..	675	0	0

			£	s.	d.
Of the value of £25,000 and under the value of £40,000	..		785	0	0
" 40,000	"	45,000	..	900	0 0
" 45,000	"	50,000	..	1,010	0 0
" 50,000	"	60,000	..	1,125	0 0
" 60,000	"	70,000	..	1,350	0 0
" 70,000	"	80,000	..	1,575	0 0
" 80,000	"	90,000	..	1,800	0 0
" 90,000	"	100,000	..	2,025	0 0
" 100,000	"	120,000	..	2,250	0 0
" 120,000	"	140,000	..	2,700	0 0
" 140,000	"	160,000	..	3,150	0 0
" 160,000	"	180,000	..	3,600	0 0
" 180,000	"	200,000	..	4,050	0 0
" 200,000	"	250,000	..	4,500	0 0
" 250,000	"	300,000	..	5,625	0 0
" 300,000	"	350,000	..	6,750	0 0
" 350,000	"	400,000	..	7,875	0 0
" 400,000	"	500,000	..	9,000	0 0
" 500,000	"	600,000	..	11,250	0 0
" 600,000	"	700,000	..	13,500	0 0
" 700,000	"	800,000	..	15,750	0 0
" 800,000	"	900,000	..	18,000	0 0
" 900,000	"	1,000,000	..	20,250	0 0
" 1,000,000 and upwards; for every £100,000 of the whole value of such estate and effects, and any fractional part of £100,000 (<i>d</i>)	..		22,050	0	0

Exemptions from all Stamp Duties.

Probate of will, letters of administration, confirmation of testament, and oik thereto, and inventory of the effects of any common seaman, marine or soldier, who shall be slain or die in the service of his Majesty, his heirs, or successors (*e*);

Additional inventory to be exhibited and recorded in any commissary court in Scotland; where the same shall not be liable to a duty of greater amount than the duty already paid upon any former inventory exhibited and recorded of the estate and effects of the same person.

(*d*) 22 & 23 Vict. c. 36, s. 1.

(*e*) See 2 & 3 Vict. c. 37, s. 50.

F E E S

TO BE TAKEN IN THE

PRINCIPAL REGISTRY OF THE COURT OF PROBATE

IN

NON-CONTENTIOUS BUSINESS.

 PROBATES OR LETTERS OF ADMINISTRATION WITH WILL
ANNEXED.

If the personal estate is sworn to be—				£	s.	d.
Under the value of £5				..	0	1 0
20	..	..	..	..	0	1 0
100	..	..	..	..	0	1 0
200	..	..	..	..	0	3 0
300	..	..	..	..	0	7 6
450	..	..	..	..	0	12 0
600	..	..	..	..	0	16 6
800	..	..	..	..	1	2 6
1,000	..	..	..	..	1	13 0
1,500	..	..	..	..	2	5 0
2,000	..	..	..	..	3	0 0
3,000	..	..	..	..	3	15 0
4,000	..	..	..	..	4	10 0
5,000	..	..	..	..	4	15 0
6,000	..	..	..	..	5	0 0
7,000	..	..	..	..	5	5 0
8,000	..	..	..	..	5	10 0
9,000	..	..	..	..	5	15 0
10,000	..	..	..	..	6	0 0
12,000	..	..	..	..	6	5 0
14,000	..	..	..	..	6	10 0
16,000	..	..	..	..	6	17 6
18,000	..	..	..	..	7	5 0
20,000	..	..	..	..	7	12 6
25,000	..	..	..	..	8	2 6
30,000	..	..	..	..	8	15 0
35,000	..	..	..	..	9	7 6
40,000	..	..	..	..	10	6 3
45,000	..	..	..	..	11	5 0
50,000	..	..	..	..	12	3 9
60,000	..	..	..	..	13	2 6
70,000	..	..	..	..	15	0 0
80,000	..	..	..	..	16	17 6
90,000	..	..	..	..	18	15 0

PROBATES—continued.

If the personal estate is sworn to be—				£	s.	d.
Under the value of £100,000	..	..	..	20	12	6
120,000	..	..	..	21	11	3
140,000	..	..	..	23	8	9
160,000	..	..	..	25	6	3
180,000	..	..	..	27	3	9
200,000	..	..	..	29	1	3
250,000	..	..	..	30	18	9
300,000	..	..	..	35	12	6
350,000	..	..	..	40	6	3
400,000	..	..	..	41	17	6
500,000	..	..	..	43	8	9
For every additional 100,000£., or any fractional part of 100,000£., a further and additional fee of				3	2	6

Double or Cessate Probate, &c.

For every double or cessate probate, or letters of administration with the will annexed, de bonis non or cessate, when the personal estate is under 450 <i>l</i> . or any smaller sum, the same fee as on a first grant under the same sum.					
When the personal estate is of the value of 450 <i>l</i> . and upwards	0	12	6		
For every duplicate and triplicate probate, or letters of administration with the will annexed, when the personal estate is under 450 <i>l</i> . or any smaller sum, the same fee as on a first grant under the same sum.					
When the personal estate is of the value of 450 <i>l</i> . and upwards	0	12	6		

Exemplifications.

For every exemplification of a probate, or letters of administration with the will annexed, in addition to the fees for engrossing and collating the will and other documents registered with the same						
	1	1	0			

Registering and collating or engrossing and collating Wills.

For registering and collating or engrossing and collating wills and other documents, if three folios of ninety words each, or under, including parchment	0	4	6
If above three folios of ninety words each, per folio	0	1	6
In cases of grants for Queen's pay or prize money, the effects being under 100£., without reference to the length of the will	0	4	6
If there are pencil marks in a will or codicil, or if a will or codicil or any part thereof is to be or has been registered fac simile, in addition to any other fee for registering and collating or for engrossing and collating the same:			
If the part or parts to be registered or engrossed fac simile are two folios of ninety words in length, or under	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words	0	0	6

Codicils to Wills already proved.

For every probate of a codicil or codicils, or letters of administration with a codicil or codicils annexed, being a codicil or codicils to a will already proved, the same fees respectively as on a duplicate probate or duplicate letters of administration with will annexed.

LETTERS OF ADMINISTRATION.

If the personal estate is sworn to be—				£	s.	d.
Under the value of £5				0	1	0
20	..	..	..	0	1	0
50	..	..	..	0	1	0
100	..	..	..	0	1	0
200	..	..	..	0	4	6
300	..	..	..	0	12	0
450	..	..	..	0	16	6
600	..	..	..	1	2	6
800	..	..	..	1	13	0
1,000	..	..	..	2	5	0
1,500	..	..	..	3	7	6
2,000	..	..	..	4	10	0
3,000	..	..	..	4	13	9
4,000	..	..	..	4	17	6
5,000	..	..	..	5	5	0
6,000	..	..	..	5	12	6
7,000	..	..	..	6	0	0
8,000	..	..	..	6	7	6
9,000	..	..	..	6	15	0
10,000	..	..	..	7	2	6
12,000	..	..	..	7	10	0
14,000	..	..	..	7	17	6
16,000	..	..	..	8	8	9
18,000	..	..	..	9	0	0
20,000	..	..	..	9	11	3
25,000	..	..	..	10	6	3
30,000	..	..	..	11	5	0
35,000	..	..	..	12	3	9
40,000	..	..	..	13	11	3
45,000	..	..	..	15	0	0
50,000	..	..	..	16	7	6
60,000	..	..	..	17	16	3
70,000	..	..	..	20	2	6
80,000	..	..	..	23	8	9
90,000	..	..	..	26	5	0
100,000	..	..	..	29	1	3
120,000	..	..	..	30	9	6
140,000	..	..	..	33	5	9
160,000	..	..	..	36	2	0
180,000	..	..	..	38	18	3
200,000	..	..	..	41	14	6
250,000	..	..	..	44	10	9
300,000	..	..	..	46	17	6
350,000	..	..	..	49	4	6
400,000	..	..	..	51	11	3
500,000	..	..	..	53	18	3
For every additional 100,000£., or any fractional part of 100,000£., a further and additional fee of				4	13	6

Duplicate and Triplicate Letters of Administration, &c.

For every duplicate and triplicate letters of administration when the personal estate is under 300£. or any sum less than 300£., the same fee as on a first grant of letters of administration under the same sum.

For every duplicate and triplicate letters of administration when the personal estate is of the value of 300£. and upwards .. 0 12 6

Exemplifications.

	£	s.	d.
For every exemplification of letters of administration	1	1	0

Administration de bonis non or cessate.

For every grant of letters of administration de bonis non or cessate, when the personal estate is under 300*l.* or any smaller sum, the same fee as on a first grant under the same sum.

When the personal estate is of the value of 300 <i>l.</i> and upwards	0	12	6
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Additional Security.

For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given	0	5	0
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For every certificate for the Inland Revenue Office, that additional security has been given	0	1	0
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Articles to pay pro Rata.

For articles entered into by administrators to pay creditors <i>pro rata</i> , per folio of seventy-two words each	0	2	0
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For the bond for the performance of the articles, or for payment of creditors <i>pro rata</i> , per folio of seventy-two words	0	2	0
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Searches and Inspection of Wills, &c.

For every search for will or grant of letters of administration or any document filed in the Principal Registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	0	1	0
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For every third will or administration act looked up in addition to the above	0	1	0
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For looking up and inspecting an original will after the same is registered in addition to the fee for the search	0	1	0
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For looking up and producing any document filed in the Registry other than an original will or administration act	0	1	0
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For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same:			
--	--	--	--

For the search for each year or part of a year	0	0	6
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For reading the will:			
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If twenty folios of ninety words each or under	0	1	0
--	---	---	---

For every additional twenty folios or part of twenty folios of ninety words each	0	1	0
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Searches for former Grants.

For every search by an officer of the Principal Registry in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under:—

For every year or part of a year after the 31st December of the year in which the deceased died	0	0	6
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In case it be requisite to extend the search to one or more District Registries, a similar additional fee for the search in each of such District Registries.

Special and Limited Grants.

For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under:—

If the personal estate is under the value of 20*l.*, 1*s.* per folio

of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration. £ s. d.

If the personal estate is of the value of 20*l.* and upwards, 2*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.

Whenever the personal estate to be placed in possession of, or dealt with by, the executor or administrator, by means of a special or limited grant of probate or letters of administration, exceeds in value the sum of 20*l.*, the fee of 2*s.* per folio of seventy-two words shall be payable on the bond, on the act, and on the grant, although the personal estate be sworn under 20*l.*

Sealing Irish and Scotch Grants.

For affixing the seal of the Court to any grant of probate or letters of administration, with or without will annexed, or to any exemplification of probate or letters of administration, with or without will annexed, under seal of the Court of Probate in Ireland, in order to its becoming in force for property in England,—such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be affected by the probate or other instrument to which the seal of the Court is to be affixed.

For the Registrar's fiat on an Irish grant. 0 5 0

For affixing the seal of the Court to any confirmation of an executor issued by authority of a Commissary Court in Scotland. 1 1 0

Notation of Domicile.

For noting on a probate or on letters of administration, with or without will annexed, that the testator or intestate died domiciled in England 0 5 0

Office Copies and Extracts.

For every office copy or extract of a will, or of a probate, or administration act, or of any document filed or deposited in the Principal Registry, if five folios of ninety words or under 0 2 6

If exceeding five folios of ninety words, for every additional folio or part of a folio 0 0 6

If the will or other document is 200 years old and five folios of ninety words or under 0 5 0

If exceeding five folios of ninety words, for every additional folio or part of a folio 0 0 9

If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is two folios of ninety words in length or under, in addition to the fee for the copy . . . 0 1 0

If exceeding two folios of ninety words, for every additional folio or part of a folio 0 0 6

For copies of wills and other documents in foreign languages made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition to any other fees which may be payable in respect of such copies.

If a copy is required to be printed (in addition to a manuscript copy for the printer, at 6*d.* per folio of ninety words, and collating):—

For twenty folios of ninety words or under	0	10	0
For every additional folio or part of a folio.. ..	0	1	0
For every copy of a will made for the Inland Revenue Office, per folio of ninety words	0	0	6
For every abstract of an administration act for the Inland Revenue Office	0	3	3
For office copy of a will, minute, order, decree or any document under seal of the Court for which no other fee is payable:—			
For the seal, in addition to the fee for the copy and collating	0	5	0
For copies of plans, drawings and armorial bearings, &c. such fee as shall be determined by the Registrar in each particular case.			

Collating Documents.

For collating copy of a probate and will, or copy of letters of administration with or without the will annexed, or any other instrument to be filed or deposited in the Registry, or for collating any copy or instrument with an original document already filed or deposited in the Registry, including the Registrar's certificate in verification thereof.

If ten folios of ninety words each, or under	0	2	6
If above ten folios of ninety words each, per folio	0	0	3
If there is any pencil writing copied or the copy or any part thereof is fac simile, in addition to the above fees:—			
If each pencil writing or fac simile copy is two folios of ninety words in length or under	0	0	6
For every additional folio or part of a folio.. ..	0	0	3

Attendances.

For attendance with any book or original document in any of the Courts of law or equity in London or Westminster, or elsewhere within three miles of the Principal Registry	1	1	0
For the second and each subsequent attendance in the same term or sittings after term	0	10	6
For attendance with books or original documents in any of the Courts of law or equity in London or Westminster, or elsewhere within three miles of the Principal Registry, when more than one book or document are required, for each book or document besides the first	0	5	0
For the second and each subsequent attendance in the same term or sittings after term, for each book or document besides the first	0	2	6
For each day's attendance with any book or original document in any of the Courts of law or equity, or elsewhere beyond the distance of three miles from the Principal Registry, exclusive of travelling expenses	1	1	0
For each day's attendance with books or original documents in any of the Courts of law or equity, or elsewhere beyond the distance of three miles from the Principal Registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first	0	5	0
The travelling expenses to be advanced and paid to the messenger attending with books or original documents, shall include all other necessary expenses which are to be or may have been incurred by such messenger.			

<i>Registrar's Order.</i>		£	s.	d.
For every Registrar's order for revocation of a grant	0	5	0	
For every other Registrar's order	0	2	6	

Filing.

For filing affidavit for the Inland Revenue Office on granting probate or letters of administration with or without will annexed for Queen's pay or prize money	0	1	0	
For filing every other affidavit and other document brought into and deposited in the Principal Registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6	
For filing every exhibit	0	1	0	
For filing in the Principal Registry any notice required to be sent there by a District Registrar	0	0	6	
For filing in a District Registry any notice required to be sent there by a Registrar of the Principal Registry.. ..	0	0	6	

Caveats.

For the entry of every caveat	0	1	0	
For each notice of such caveat to the District Registrars	0	1	0	
For every warning to a caveat	0	2	6	
For every service of a warning to caveat sent by a Registrar through the public post	0	2	6	
For subducing a caveat	0	1	0	
For notice to any District Registrar to whom notice of a caveat has been sent of its having been subducted or warned.. ..	0	1	0	

Receipts for Papers.

For every receipt for documents left in the Principal Registry in order to obtain a grant of probate or letters of administration with or without will annexed, or any second or subsequent grant	0	1	0	
For every receipt for a document or documents delivered out of the Principal Registry	0	1	0	

Deposit of Wills.

For depositing every will of a person deceased in the Principal Registry for safe custody.. ..	0	10	0	
For depositing every will of a living person for safe custody, including the deposit receipt	1	1	0	

Taxing Costs.

For taxing every bill of costs, inclusive of the Registrar's certificate:				
If five folios of seventy-two words, or under	0	5	0	
If exceeding that length, for every additional folio	0	1	0	
For postponement of appointment for taxation of costs, to be paid by the party at whose instance the appointment is postponed:				
If the bill of costs is five folios of seventy-two words, or under	0	1	0	
If exceeding five folios of seventy-two words, and under fifteen folios	0	2	6	
Exceeding fifteen folios	0	5	0	

Bonds.

	£	s.	d.
For superintending and attesting the execution of a bond ..	0	1	6
If not completed on one occasion, for each subsequent attestation	0	1	0

Oaths.

For every oath administered by the Registrars to each deponent ..	0	1	0
For marking each exhibit	0	1	0

Settling Advertisements.

For settling the abstract of citation for advertisement or other advertisement	0	2	6
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Alterations in Grants.

For making alterations in grants of probate or letters of administration in pursuance of the order of one of the Registrars ..	0	2	6
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Notations.

For noting alterations in and revocations of grants on the record of the same	0	2	6
For noting second and subsequent grants on the record of the first grant	0	2	6
For noting renunciations, or any other necessary matter on the record of a grant	0	2	6

Certificates.

For every certificate under the hand of one or more of the Registrars of the Principal Registry for which no other fee is payable	0	2	6
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Fiat.

For the fiat of a Registrar as to the form in which any will or codicil is to be registered	0	5	0
For noting on a testamentary paper that probate thereof is refused	0	5	0

Notices.

For every notice required to be sent to a District Registrar for which no other fee is payable, except notices required by Rule 72	0	1	0
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Perusing and settling Oaths, &c.

For perusing and settling oaths to lead special or limited grants of probate or letters of administration, with or without will, or other instruments :			
If five folios of seventy-two words, or under	0	2	6
If above five folios, for each additional folio	0	0	3
For perusing deeds and other documents when necessary, per folio of seventy-two words	0	0	3

Proctor.

For admission of a proctor	1	1	0
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Commissioner.

For each appointment of a Commissioner in the Court of Probate ..	1	0	0
For registering the appointment of a Commissioner appointed to administer oaths in the Court of Chancery	0	5	0

Articled Clerk.

For transfer of an articled clerk	1	0	0
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F E E S

TO BE TAKEN IN THE

DISTRICT REGISTRIES OF THE COURT OF PROBATE.

 PROBATES OR LETTERS OF ADMINISTRATION WITH WILL
ANNEXED.

If the personal estate is sworn to be—				£	s.	d.
Under the value of £5				..	0	1 0
20	..	..	..	..	0	1 0
100	..	..	..	..	0	1 0
200	..	..	..	..	0	3 0
300	..	..	..	..	0	7 6
450	..	..	..	..	0	12 0
600	..	..	..	..	0	16 6
800	..	..	..	..	1	2 6
1,000	..	..	..	..	1	13 0
1,500	..	..	..	..	2	5 0
2,000	..	..	..	..	3	0 0
3,000	..	..	..	..	3	15 0
4,000	..	..	..	..	4	10 0
5,000	..	..	..	..	4	15 0
6,000	..	..	..	..	5	0 0
7,000	..	..	..	..	5	5 0
8,000	..	..	..	..	5	10 0
9,000	..	..	..	..	5	15 0
10,000	..	..	..	..	6	0 0
12,000	..	..	..	..	6	5 0
14,000	..	..	..	..	6	10 0
16,000	..	..	..	..	6	17 6
18,000	..	..	..	..	7	5 0
20,000	..	..	..	..	7	12 6
25,000	..	..	..	..	8	2 6
30,000	..	..	..	..	8	15 0
35,000	..	..	..	..	9	7 6
40,000	..	..	..	..	10	6 3
45,000	..	..	..	..	11	5 0
50,000	..	..	..	..	12	3 9
60,000	..	..	..	..	13	2 6
70,000	..	..	..	..	15	0 0
80,000	..	..	..	..	16	17 6
90,000	..	..	..	..	18	15 0
100,000	..	..	..	..	20	12 6
120,000	..	..	..	..	21	11 3
140,000	..	..	..	..	23	8 9

PROBATES—*continued.*

If the personal estate is sworn to be—				£	s.	d.
Under the value of £160,000	..	..	..	25	6	3
180,000	..	..	..	27	3	9
200,000	..	..	..	29	1	3
250,000	..	..	..	30	18	9
300,000	..	..	..	35	12	6
350,000	..	..	..	40	6	3
400,000	..	..	..	41	17	6
500,000	..	..	..	43	8	9
For every additional 100,000£. or any fractional part of 100,000£.						
a further and additional fee of	..	..	..	3	2	6

Double or Cessate Probate, &c.

For every double or cessate probate, or letters of administration with the will annexed, de bonis non or cessate, when the personal estate is under 450£. or any smaller sum, the same fee as on a first grant under the same sum.

When the personal estate is of the value of 450£. and upwards	0	12	6
For every duplicate and triplicate probate, or letters of administration with the will annexed, when the personal estate is under 450£. or any smaller sum, the same fee as on a first grant under the same sum.			
When the personal estate is of the value of 450£. and upwards	0	12	6

Exemplifications.

For every exemplification of a probate, or letters of administration with the will annexed, in addition to the fees for engrossing and collating the will and other documents registered with the same	1	1	0
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Registering and collating or engrossing and collating Wills.

For registering and collating or engrossing and collating wills and other documents, if three folios of ninety words each, or under, including parchment	0	4	6
If above three folios of ninety words each, per folio	0	1	6
In cases of grants for Queen's pay or prize money, the effects being under 100£., without reference to the length of the will	0	4	6
If there are pencil marks in a will or codicil, or if a will or codicil, or any part thereof is to be or has been registered fac simile, in addition to any other fee for registering and collating or for engrossing and collating the same:			
If the part or parts to be registered or engrossed fac simile are two folios of ninety words in length, or under	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words	0	0	6

Codicils to Wills already proved.

For every probate of a codicil or codicils, or letters of administration with a codicil or codicils annexed, being a codicil or codicils to a will already proved, the same fees respectively as on a duplicate probate or duplicate letters of administration with will annexed.

LETTERS OF ADMINISTRATION.

If the personal estate is sworn to be—			£	s.	d.
Under the value of	£5	.. ..	0	1	0
.. ..	20	.. ..	0	1	0
.. ..	50	.. ..	0	1	0
.. ..	100	.. ..	0	1	0
.. ..	200	.. ..	0	4	6
.. ..	300	.. ..	0	12	0
.. ..	450	.. ..	0	16	6
.. ..	600	.. ..	1	2	6
.. ..	800	.. ..	1	13	0
.. ..	1,000	.. ..	2	5	0
.. ..	1,500	.. ..	3	7	6
.. ..	2,000	.. ..	4	10	0
.. ..	3,000	.. ..	4	13	9
.. ..	4,000	.. ..	4	17	6
.. ..	5,000	.. ..	5	5	0
.. ..	6,000	.. ..	5	12	6
.. ..	7,000	.. ..	6	0	0
.. ..	8,000	.. ..	6	7	6
.. ..	9,000	.. ..	6	15	0
.. ..	10,000	.. ..	7	2	6
.. ..	12,000	.. ..	7	10	0
.. ..	14,000	.. ..	7	17	6
.. ..	16,000	.. ..	8	8	9
.. ..	18,000	.. ..	9	0	0
.. ..	20,000	.. ..	9	11	3
.. ..	25,000	.. ..	10	6	3
.. ..	30,000	.. ..	11	5	0
.. ..	35,000	.. ..	12	3	9
.. ..	40,000	.. ..	13	11	3
.. ..	45,000	.. ..	15	0	0
.. ..	50,000	.. ..	16	7	6
.. ..	60,000	.. ..	17	16	3
.. ..	70,000	.. ..	20	12	6
.. ..	80,000	.. ..	23	8	9
.. ..	90,000	.. ..	26	5	0
.. ..	100,000	.. ..	29	1	3
.. ..	120,000	.. ..	30	9	6
.. ..	140,000	.. ..	33	5	9
.. ..	160,000	.. ..	36	2	0
.. ..	180,000	.. ..	38	18	3
.. ..	200,000	.. ..	41	14	6
.. ..	250,000	.. ..	44	10	9
.. ..	300,000	.. ..	46	17	6
.. ..	350,000	.. ..	49	4	6
.. ..	400,000	.. ..	51	11	3
.. ..	500,000	.. ..	53	18	3
For every additional 100,000 ^l ., or any fractional part of 100,000 ^l ., a further and additional fee of			4	13	6

Duplicate and Triplicate Letters of Administration, &c.

For every duplicate and triplicate letters of administration when the personal estate is under 300^l. or any sum less than 300^l., the same fee as on a first grant of letters of administration under the same sum.

For every duplicate and triplicate letters of administration when the personal estate is of the value of 300^l., and upwards .. 0 12 6

Exemplifications.

£ s. d.

For every exemplification of letters of administration 1 1 0

Administrations de bonis non or cessate.

For every grant of letters of administration de bonis non or cessate, when the personal estate is under 300*l.* or any smaller sum, the same fee as on a first grant under the same sum.

When the personal estate is of the value of 300*l.* and upwards 0 12 6

Additional Security.

For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given 0 5 0

For every certificate for the Inland Revenue Office, that additional security has been given 0 1 0

Articles to pay pro Rata.

For articles entered into by administrators to pay creditors *pro rata*, per folio of seventy-two words each 0 2 0

For the bond for the performance of the articles, or for payment of creditors *pro rata*, per folio of seventy-two words 0 2 0

Searches and Inspection of Wills, &c.

For every search for will or grant of letters of administration or any document filed in a District Registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act .. 0 1 0

For every third will or administration act looked up in addition to the above 0 1 0

For looking up and inspecting an original will after the same is registered in addition to the fee for the search 0 1 0

For looking up and producing any document filed in a District Registry other than an original will or administration act .. 0 1 0

For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same:

For the search for each year or part of a year 0 0 6

For reading the will:—

If twenty folios of ninety words each or under 0 1 0

For every additional twenty folios or part of twenty folios of ninety words each 0 1 0

Searches for former Grants.

For every search by an officer of the Principal Registry or by an officer of a District Registry, in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under:—

For every year or part of a year after the 31st December of the year in which the deceased died 0 0 6

In case it be requisite to extend the search to one or more other District Registries, a similar additional fee for the search in each of such Registries.

Special and Limited Grants.

For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under:—

If the personal estate is under the value of 20*l.*, 1*s.* per folio

B.

O O

of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration. £ s. d.

If the personal estate is of the value of 20*l.* and upwards, 2*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.

Whenever the personal estate to be placed in possession of, or dealt with by, the executor or administrator, by means of a special or limited grant of probate or letters of administration, exceeds in value the sum of 20*l.*, the fee of 2*s.* per folio of seventy-two words shall be payable on the bond, on the act, and on the grant, although the personal estate be sworn under 20*l.*

Notation of Domicile.

For noting on a probate or on letters of administration, with or without will annexed, that the testator or intestate died domiciled in England 0 5 0

Office Copies and Extracts.

For every office copy or extract of a will, or probate, or administration act, or of any document filed or deposited in a District Registry, if five folios of ninety words or under 0 2 6
 If exceeding five folios of ninety words, for every additional folio or part of a folio 0 0 6
 If the will or other document is 200 years old and five folios of ninety words or under 0 5 0
 If exceeding five folios of ninety words, for every additional folio or part of a folio 0 0 9
 If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is two folios of ninety words in length or under, in addition to the fee for the copy 0 1 0
 If exceeding two folios of ninety words, for every additional folio or part of a folio 0 0 6
 For copies of wills and other documents in foreign languages made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition to any other fees which may be payable in respect of such copies.
 If a copy is required to be printed (in addition to a manuscript copy for the printer, at 6*d.* per folio of ninety words and collating):—
 If twenty folios of ninety words or under 0 10 0
 For every additional folio or part of a folio 0 1 0
 For office copy of a will, minute, order, decree or any document under seal of the Court for which no other fee is payable:—
 For the seal in addition to the fee for the copy and collating 0 5 0
 For copies of plans, drawings and armorial bearings, &c., such fee as shall be determined by the District Registrar in each particular case.

Collating Documents.

For collating copy of a probate and will, or copy of letters of administration, with or without the will annexed, or any other instrument to be filed or deposited in a District Registry, or for collating any copy or instrument with an original docu-

ment already filed or deposited in a District Registry, including the District Registrar's certificate in verification thereof:—	£	s.	d.
If ten folios of ninety words each, or under	0	2	6
If above ten folios of ninety words each, per folio	0	0	3
If there is any pencil writing copied or the copy or any part thereof is fac simile in addition to the above fees:—			
If such pencil writing or fac simile copy is two folios of ninety words in length or under	0	0	6
For every additional folio or part of a folio	0	0	3

Attendances.

For attendance with any book or original document within three miles of the District Registry	1	1	0
For the second and each subsequent attendance at the same place within fourteen days	0	10	6
For attendance with books or original documents within three miles of the District Registry, when more than one book or document are required, for each book or document besides the first	0	5	0
For the second and each subsequent attendance at the same place within fourteen days, for each book or document besides the first	0	2	6
For each day's attendance with any book or original document beyond the distance of three miles from the District Registry, exclusive of travelling expenses	1	1	0
For each day's attendance with books or original documents beyond the distance of three miles from the District Registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first	0	5	0
The travelling expenses to be advanced and paid to the messenger attending with books or original documents shall include all other necessary expenses which are to be or may have been incurred by such messenger.			

District Registrar's Minute.

For every District Registrar's minute	0	2	6
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Filing.

For filing affidavit for the Inland Revenue Office on granting probate or letters of administration, with or without will annexed, for Queen's pay or prize money	0	1	0
For filing every other affidavit and other document brought into and deposited in a District Registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6
For filing every exhibit	0	1	0
For filing in a District Registry any notice required to be sent there from the Principal Registry	0	0	6
For filing in the Principal Registry any notice required to be sent there by a District Registrar	0	0	6

Caveats.

For the entry of every caveat	0	1	0
For each notice of such caveat to the Principal or to any District Registry	0	1	0

	£	s.	d.
For subducting a caveat	0	1	0
For notice to the Principal Registry or to any District Registry to which notice of a caveat has been sent of its having been subducted	0	1	0

Receipts for Papers.

For every receipt for documents left in a District Registry ..	0	1	0
For every receipt for a document or documents delivered out of a District Registry	0	1	0

Deposit of Wills.

For depositing every will of a person deceased in a District Registry for safe custody.. .. .	0	10	0
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Bonds.

For superintending and attesting the execution of a bond ..	0	1	6
If not completed on one occasion, for each subsequent attestation	0	1	0

Oaths.

For every oath administered by a District Registrar to each deponent	0	1	0
For marking each exhibit	0	1	0

Alterations in Grants.

For making alterations in grants of probate or letters of administration in pursuance of an order of one of the Registrars of the Principal Registry	0	2	6
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Notations.

For noting alterations in and revocations of grants on the record of the same.. .. .	0	2	6
For noting second and subsequent grants on the record of the first grant	0	2	6
For noting renunciations, or any other necessary matter on the record of a grant	0	2	6

Certificates.

For every certificate under the hand of a District Registrar for which no other fee is payable	0	2	6
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Fiats.

For the fiat of a District Registrar as to the form in which any will or codicil is to be registered	0	5	0
For noting on a testamentary paper that probate thereof is refused	0	5	0

Notices.

For every notice required to be sent to the Principal Registry for which no other fee is payable, except notices required by Rule 82	0	1	0
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Perusal of Deeds, &c.

For perusing deeds or other documents when necessary, for every folio or part of a folio of 72 words	0	0	3
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IN ADDITION TO THE ORDINARY FEES
TO BE TAKEN IN THE
PRINCIPAL REGISTRY OF THE COURT OF PROBATE
(or, in the District Registries attached to the Court of Probate) (a)
IN
NON-CONTENTIOUS BUSINESS,
THE FOLLOWING FEES
ARE TO BE TAKEN IN THE DEPARTMENT FOR PERSONAL
APPLICATIONS
(or, in the District Registries in cases of Personal Applications).

On Probates or Letters of Administration with Will annexed.

Effects sworn under	Preparing Oath of Executors.	Preparing Affidavit for the Inland Revenue Office.	Probate under Seal.	Clerks, Letters, &c.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 2 6	0 1 0	0 1 0
100	0 5 0	0 5 0	0 1 0	0 2 0
200	0 5 0	0 5 0	0 2 0	0 2 0
300	0 5 0	0 5 0	0 5 0	0 2 0
450	0 5 0	0 5 0	0 8 0	0 2 0
600	0 5 0	0 5 0	0 11 0	0 2 0
800	0 5 0	0 5 0	0 15 0	0 2 0
1,000	0 5 0	0 5 0	1 2 0	0 2 0
1,500	0 5 0	0 5 0	1 10 0	0 5 0
2,000	0 5 0	0 5 0	2 0 0	0 5 0
3,000	0 5 0	0 5 0	2 10 0	0 5 0
4,000	0 5 0	0 5 0	3 0 0	0 5 0
5,000	0 5 0	0 5 0	3 2 6	0 7 6
6,000	0 5 0	0 5 0	3 5 0	0 7 6
7,000	0 5 0	0 5 0	3 7 6	0 7 6
8,000	0 5 0	0 5 0	3 10 0	0 7 6
9,000	0 5 0	0 5 0	3 12 6	0 7 6
10,000	0 5 0	0 5 0	3 15 0	0 7 6
12,000	0 5 0	0 5 0	3 17 6	0 7 6
14,000	0 5 0	0 5 0	4 0 0	0 7 6

(a) These charges being the same (with slight exceptions) in the Principal Registry and in the District Registries, are inserted only once—the exceptions are the three last items, which do not appear in the official list of fees in the District Registries—as see below, p. 569.

Effects sworn under	Preparing Oath of Executors.	Preparing Affidavit for the Inland Revenue Office.	Probate under Seal.	Clerks, Letters, &c.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
16,000	0 5 0	0 5 0	4 3 9	0 7 6
18,000	0 5 0	0 5 0	4 7 6	0 7 6
20,000	0 5 0	0 5 0	4 11 3	0 7 6
25,000	0 5 0	0 5 0	4 16 3	0 7 6
30,000	0 5 0	0 5 0	5 2 6	0 7 6
35,000	0 5 0	0 5 0	5 8 9	0 7 6
40,000	0 5 0	0 5 0	5 18 3	0 7 6
45,000	0 5 0	0 5 0	6 7 6	0 7 6
50,000	0 5 0	0 5 0	6 17 0	0 7 6
60,000	0 5 0	0 5 0	7 6 3	0 7 6
70,000	0 5 0	0 5 0	8 5 0	0 7 6
80,000	0 5 0	0 5 0	9 3 9	1 1 0
90,000	0 5 0	0 5 0	10 2 6	1 1 0
100,000	0 5 0	0 5 0	11 1 3	1 1 0
120,000	0 5 0	0 5 0	11 10 9	1 1 0
140,000	0 5 0	0 5 0	12 9 6	1 1 0
160,000	0 5 0	0 5 0	13 8 3	1 1 0
180,000	0 5 0	0 5 0	14 7 0	1 1 0
200,000	0 5 0	0 5 0	15 5 9	1 1 0
250,000	0 5 0	0 5 0	16 4 6	1 1 0
300,000	0 5 0	0 5 0	18 11 3	1 1 0
350,000	0 5 0	0 5 0	20 18 3	1 1 0
400,000	0 5 0	0 5 0	21 13 9	1 1 0
500,000	0 5 0	0 5 0	22 9 6	1 1 0

For every additional 100,000*l.*, or any fractional part of 100,000*l.*, under which the effects are sworn, in addition to the above fees, 1*l.* 1*s.* 3*d.*

	£	s.	d.
For engrossing and collating the will, if three folios of ninety words or under, including parchment	0 4 6
If exceeding three folios, per folio	0 1 6

Fees on Letters of Administration with Will annexed.

In addition to the above fees:

For preparing the bond—if the effects are

	£	s.	d.
Under 20 <i>l.</i>	0 1 6
20 <i>l.</i> and under 100 <i>l.</i>	0 3 6
100 <i>l.</i> and upwards	0 5 0

On Letters of Administration.

Effects sworn under	Preparing Oath of Administrator and Bond.	Preparing Affidavit for the Inland Revenue.	Letters of Administration under Seal.	Clerks, Letters, &c.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 4 0	0 2 6	0 1 0	—
20	0 4 0	0 2 6	0 1 0	0 1 0
50	0 7 6	0 3 0	0 1 0	0 2 0
100	0 8 6	0 5 0	0 1 0	0 2 0
200	0 10 0	0 5 0	0 3 0	0 2 0
300	0 10 0	0 5 0	0 8 0	0 2 0
450	0 10 0	0 5 0	0 11 0	0 2 0
600	0 10 0	0 5 0	0 15 0	0 2 0
800	0 10 0	0 5 0	1 2 0	0 2 0
1,000	0 10 0	0 5 0	1 10 0	0 5 0
1,500	0 10 0	0 5 0	2 5 0	0 5 0
2,000	0 10 0	0 5 0	3 0 0	0 5 0
3,000	0 10 0	0 5 0	3 1 9	0 7 6
4,000	0 10 0	0 5 0	3 3 9	0 7 6
5,000	0 10 0	0 5 0	3 7 6	0 7 6
6,000	0 10 0	0 5 0	3 11 3	0 7 6
7,000	0 10 0	0 5 0	3 15 0	0 7 6
8,000	0 10 0	0 5 0	3 18 9	0 7 6
9,000	0 10 0	0 5 0	4 2 6	0 7 6
10,000	0 10 0	0 5 0	4 6 3	0 7 6
12,000	0 10 0	0 5 0	4 10 0	0 7 6
14,000	0 10 0	0 5 0	4 13 9	0 7 6
16,000	0 10 0	0 5 0	4 19 6	0 7 6
18,000	0 10 0	0 5 0	5 5 0	0 7 6
20,000	0 10 0	0 5 0	5 10 9	0 7 6
25,000	0 10 0	0 5 0	5 18 3	0 7 6
30,000	0 10 0	0 5 0	6 7 6	0 7 6
35,000	0 10 0	0 5 0	6 17 0	0 7 6
40,000	0 10 0	0 5 0	7 10 9	0 7 6
45,000	0 10 0	0 5 0	8 5 0	0 7 6
50,000	0 10 0	0 5 0	8 18 9	0 7 6
60,000	0 10 0	0 5 0	9 13 3	0 7 6
70,000	0 10 0	0 5 0	11 1 3	0 7 6
80,000	0 10 0	0 5 0	12 9 6	1 1 0
90,000	0 10 0	0 5 0	13 17 6	1 1 0
100,000	0 10 0	0 5 0	15 5 9	1 1 0
120,000	0 10 0	0 5 0	15 19 9	1 1 0
140,000	0 10 0	0 5 0	17 8 0	1 1 0
160,000	0 10 0	0 5 0	18 16 3	1 1 0
180,000	0 10 0	0 5 0	20 4 0	1 1 0
200,000	0 10 0	0 5 0	21 12 6	1 1 0
250,000	0 10 0	0 5 0	23 0 3	1 1 0
300,000	0 10 0	0 5 0	24 3 9	1 1 0
350,000	0 10 0	0 5 0	25 7 3	1 1 0
400,000	0 10 0	0 5 0	26 10 6	1 1 0
500,000	0 10 0	0 5 0	27 14 0	1 1 0
600,000	0 10 0	0 5 0	30 10 0	1 1 0
700,000	0 10 0	0 5 0	32 7 9	1 1 0
800,000	0 10 0	0 5 0	34 13 9	1 1 0
900,000	0 10 0	0 5 0	37 1 6	1 1 0
1,000,000	0 10 0	0 5 0	39 8 6	1 1 0

For every additional 100,000*l.*, or any fractional part of 100,000*l.*, under which the effects are sworn, in addition to the above fees, 2*l.* 7*s.*

On Double or Cessate Probates.

If the Effects are sworn under	Looking up and taking an Account of each former Grant.	Oath of the Executor.	Affidavit for Inland Re- venue Office.	Double or Cessate Pro- bate under Seal.	Clerks, Letters, &c.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 2 6	0 2 6	0 1 0	0 1 0
100	0 5 0	0 5 0	0 5 0	0 1 0	0 2 0
200	0 5 0	0 6 6	0 5 0	0 3 0	0 2 0
300	0 5 0	0 6 6	0 5 0	0 7 6	0 2 0
450	0 5 0	0 6 6	0 5 0	0 12 0	0 2 0
600	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
800	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
1,000	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
1,500	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
2,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
3,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
4,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
5,000	0 5 0	0 6 6	0 5 0	0 12 6	0 7 6
Above 5,000	The fees to be taken are the same as above, except the fee for clerks, letters, &c., which, if the effects are of the value of 70,000 <i>l.</i> or upwards, is 1 <i>l.</i> 1 <i>s.</i>				

On Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	s.	d.
Looking up the grant of probate and original will, or grant of administration	0	5	0
Exemplification under seal, in addition to the 3 <i>l.</i> stamp	1	1	0
Clerks, letters, &c.	0	2	6

On Duplicate and Triplicate Probates, or Letters of Administration (with or without Will annexed), &c.

	£	s.	d.
Looking up the will	0	5	0
Duplicate or triplicate probate or letters of administration, with or without the will annexed, or probate of codicil to will already proved, or letters of administration (with same annexed), if the personal estate is sworn under 450 <i>l.</i> , or any smaller sum, the same fees as on the original grant.			
If the personal estate is of the value of 450 <i>l.</i> and upwards	0	12	6
Clerks, letters, &c.	0	2	6

On Letters of Administration with or without Will annexed, de bonis non or Cessate.

If the Effects are sworn under	Looking up and taking an Account of each former Grant.	Oath of the Administrator and Bond.	Affidavit for Inland Revenue Office.	De Bonis or Cessate Administration under Seal and Duty-paid Stamp.	Clerks, Letters, &c.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 4 0	0 2 6	0 1 0	0 1 0
50	0 3 6	0 6 0	0 3 0	0 1 6	0 2 0
100	0 5 0	0 7 6	0 5 0	0 3 0	0 2 0
200	0 5 0	0 10 0	0 5 0	0 4 6	0 2 0
300	0 5 0	0 10 0	0 5 0	0 12 0	0 2 0
450	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0
600	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0

If the effects are 600*l.* and upwards, the same fees as above, except the fee for clerks, letters, &c., which is 5*s.*

Instructions, Drawing, Copying, &c.

Instructions for every oath, affidavit, instrument, or document, other than the oaths and affidavits included in the foregoing fees	£ s. d.
.. .. .	0 5 0
Drawing same, at per folio of 72 words	0 1 0
Copies of any documents prepared in the department for personal applications, at per folio of 72 words	0 0 6
Instructions for special or limited probates, or letters of administration (<i>with or without will annexed</i>)	0 5 0
Attendances on settling oaths for special or limited grants	0 10 0

Perusing, &c.

Perusing and settling oaths, affidavits, and other instruments and documents not drawn in the department for personal applications (or District Registry, <i>as the case may be</i>), if 6 folios of 72 words or under	0 1 6
If exceeding 6 folios, at per folio of 72 words	0 0 3
Perusing and abstracting deeds, or other instruments when necessary, at per folio of 72 words	0 0 3

Oaths, &c.

Administering oaths, or taking affirmations, each deponent	0 1 0
Marking each exhibit	0 1 0

Bonds.

Attesting execution of bond	0 1 6
If not completed on one occasion, for each subsequent attestation	0 1 0

These charges are only set out in the charges in the Department for Personal Applications in the Principal Registry, and do not appear in the charges in the District Registry.

COUNTY COURT FEES.

The fees to be taken in the County Court are the same as in the case of a plaint for the sum of 20*l.*, and are to be collected by stamps (*a*).

The only stamps mentioned in the forms are those on application for a grant, or as the case may be, 16*s.* 8*d.*; and on the certificate of a decree, 40*s.*

TABLE OF FEES

To be taken for Probates of Wills, and Letters of Administration with Will annexed, of Warrant and Petty Officers and Non-commissioned Officers of MARINES, and also of COMMON SEAMEN and MARINES, in pursuance of the Act 2 Will. 4, c. 40, s. 14.

PROBATES.					
	Under what Sum the Effects sworn.	Where the Deceased was a Warrant or Petty Officer in the Navy, or a Non-commissioned Officer of Marines.		Where the Deceased was a Common Seaman or Marine.	
		If the Executor be a Wife, Child, Parent, Brother, or Sister of the Deceased.	If the Executor be more remotely related, or a Stranger to Blood to him.	If the Executor be a Wife, Child, Parent, Brother, or Sister of the Deceased.	If the Executor be more remotely related, or a Stranger to Blood to him.
	£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
If the executor sworn in London ..	20	0 7 0	0 16 6	0 7 0	0 16 6
	50	1 0 6	1 10 6	0 11 0	1 1 0
	100	1 8 6	1 15 6	0 19 0	1 6 0
If the executor sworn in the country by commission ..	20	0 19 0	1 12 0	0 19 0	1 12 0
	50	1 17 0	2 12 6	1 7 6	2 3 0
	100	2 8 0	2 17 6	1 18 6	2 8 0

(*a*) C. P. A. 1857, s. 97.

ADMINISTRATIONS, AND ADMINISTRATIONS WITH WILL ANNEXED.

	Under what Sum the Effects sworn.	Where the Deceased was a Warrant or Petty Officer in the Navy, or a Non-commissioned Officer of Marines.				Where the Deceased was a Common Seaman or Marine.			
		If the Administrator be a Wife, Child, Parent, Brother or Sister of the Deceased.		If the Administrator be more remotely related, or a Stranger in Blood to him.		If the Administrator be a Wife, Child, Parent, Brother or Sister of the Deceased.		If the Administrator be more remotely related, or a Stranger in Blood to him.	
		Administrations Intestate.	Administrations with Will annexed.	Administrations Intestate.	Administrations with Will annexed.	Administrations Intestate.	Administrations with Will annexed.	Administrations Intestate.	Administrations with Will annexed.
If the administrator sworn in London ..	£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
	20	0 12 6	0 15 0	1 3 0	1 8 0	0 12 6	0 15 0	1 3 0	1 8 0
	50	2 5 6	2 9 0	2 16 0	3 2 0	0 16 0	0 19 6	2 6 6	2 12 6
If the administrator sworn in the country by commission ..	100	3 3 6	2 18 6	3 19 0	3 16 6	1 4 0	1 9 0	2 19 6	3 7 0
	20	0 19 6	1 2 0	1 13 6	1 18 6	0 19 6	1 2 0	1 13 6	1 18 6
	50	2 17 0	3 0 6	3 13 0	3 19 0	1 7 6	1 11 0	3 3 6	3 9 6
	100	3 18 0	3 13 0	4 15 0	4 12 6	1 18 6	2 3 6	3 15 6	4 3 0

FEES

TO BE TAKEN IN

COURT AND CONTENTIOUS BUSINESS IN THE COURT
OF PROBATE.

<i>Citation.</i>							£	s.	d.
On every citation	..	..	..	..	..	..	0	5	0
On every citation to see proceedings	..	..	..	..	..	..	0	5	0
Filing citation in case of non-appearance	..	..	..	..	..	..	0	2	6
For settling citation, or abstract thereof for advertisement, or other advertisement:									
If five folios of seventy-two words or under	..	..	..	..	..	..	0	2	6
If above five folios, for each additional folio	..	..	..	..	..	..	0	0	3
<i>Appearance.</i>									
On entering appearance	..	..	..	..	..	..	0	2	6
On amending an appearance	..	..	..	..	..	..	0	2	6
Search for appearance	..	..	..	..	..	..	0	1	0
<i>Affidavit as to Scripts.</i>									
Filing affidavit as to scripts	..	..	..	..	..	..	0	2	6
Filing every script annexed to such affidavit	..	..	..	..	..	..	0	5	0
<i>Pleadings.</i>									
Filing declaration	..	..	..	..	..	..	0	5	0
Filing plea	..	..	..	..	..	..	0	5	0
Filing replication or any further pleading	..	..	..	..	..	..	0	5	0
Filing petition	..	..	..	..	..	..	0	5	0
Filing answer	..	..	..	..	..	..	0	5	0
Filing reply or any further writing to the petition	..	..	..	..	..	..	0	5	0
On amending or reforming pleadings	..	..	..	..	..	..	0	2	6
<i>Inventories.</i>									
Filing inventory	..	..	..	..	..	..	0	5	0
<i>Evidence.</i>									
Filing interrogatories (for each set)	..	..	..	..	..	..	0	5	0
Filing deposition of each witness	..	..	..	..	..	..	0	2	6
<i>Record.</i>									
On depositing the record	..	..	..	..	..	..	1	0	0
<i>Setting down.</i>									
Setting a cause down for hearing or trial	..	..	..	..	..	..	0	5	0
<i>Questions for Jury.</i>									
For settling questions of fact to be tried by a jury	..	..	..	..	..	..	0	10	0
Filing parchment copy questions as settled	..	..	..	..	..	..	0	2	6
Reducing into writing any question to be submitted to a jury under the Judge's direction	..	..	..	..	..	..	1	0	0

<i>Special Jury.</i>						£	s.	d.
Order under the signature of the Judge for a special jury	..	..	..	..	..	0	5	0
Filing panel	..	..	..	..	..	0	2	6

<i>Subpœna.</i>						£	s.	d.
On every subpœna against a witness	..	..	..	..	..	0	2	6
On every subpœna to bring in a testamentary document	..	..	..	..	..	0	5	0

<i>Trial.</i>						£	s.	d.
On the hearing or trial of a cause :								
From the plaintiff	..	..	..	..	..	1	0	0
From the defendant	..	..	..	..	..	0	15	0
If the hearing or trial continues more than one day, for each day :								
From the plaintiff	..	..	..	..	..	0	10	0
From the defendant	..	..	..	..	..	0	10	0

<i>Judge's Notes.</i>						£	s.	d.
Producing the Judge's notes	..	..	..	..	..	0	5	0

<i>Entering Verdict, Decree, or Order.</i>						£	s.	d.
Entering on the record the finding of the jury or the decision of the Judge, to be paid by the successful party	..	..	..	..	..	0	5	0
Entering special verdict, if five folios of seventy-two words or under, to be paid by the successful party	..	..	..	..	..	0	5	0
If exceeding five folios, for every additional folio of seventy-two words	..	..	..	..	..	0	1	0
Entering decree or order in pursuance of judgment of an extinct Court	..	..	..	..	..	0	10	0
Entering any final order or decree made with consent of parties by the Judge or by one of the Registrars	..	..	..	..	..	0	10	0
Entering the final decree in a cause, or order dismissing same, to be paid by the successful party	..	..	..	..	..	0	10	0
Entering order for the examination of witnesses	..	..	..	..	..	0	5	0
Entering any order or decree in the Court book, not otherwise specified	..	..	..	..	..	0	2	6

<i>Bill of Exceptions.</i>						£	s.	d.
Bill of exceptions signed by the Judge	..	..	..	..	..	0	5	0

<i>Receiver of Real Estate.</i>						£	s.	d.
Entering order appointing a receiver of real estate	..	..	..	..	..	1	0	0
Bond to be executed by the receiver of real estate :								
If three folios of seventy-two words or under	..	..	..	..	..	0	6	0
If above three folios of seventy-two words, per folio	..	..	..	..	..	0	2	0

<i>Bonds.</i>						£	s.	d.
Bonds given by any person or for any purpose, the same fees as if given by a receiver of real estate :								
Assignment of bond	..	..	..	..	..	0	5	0

<i>Taking Evidence.</i>						£	s.	d.
On every commission issuing under seal of the Court	..	..	..	..	..	1	0	0
For taking the evidence of one or more witnesses before the Registrar, and within three miles of the General Post Office, for each day	..	..	..	..	..	3	3	0
If beyond that distance, for each day in addition to travelling expenses	..	..	..	..	..	5	5	0
If for part of a day only, such smaller fee as the Registrar in his discretion shall think proper.								

APPENDIX III.—FEES, CONTENTIOUS BUSINESS (C. B.)

Commissioner or examiner appointed by order to take the examination of witnesses, for each day's attendance, besides travelling expenses	£	s.	d.
	3	3	0

Reference to Registrar for his Report.

On each reference :			
For the Registrar's attendance	1	0	0
For every hour or part of an hour, after the first hour a further fee of	0	10	0
For the Registrar's report, if 5 folios of 72 words or under	0	10	0
If exceeding 5 folios, for every additional folio	0	2	0

Motions.

Filing case for motion	0	5	0
For entering the order of Court on motion	0	5	0

Certificate.

For every certificate under the hand of one or more of the Registrars of the Principal Registry for which no other fee is payable	0	2	6
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Summons.

Summons to attend in chambers	0	2	6
For entering the order of Court on summons	0	2	6
If a final order in the cause	0	10	0

Notices.

Filing every notice	0	1	0
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Writs.

Writ of attachment	0	7	6
Writ of sequestration	1	0	0
Writ of fi. fa.	1	0	0

Filing Fees.

Filing certificate of County Court Judge	0	1	0
Filing exhibits, each exhibit	0	1	0
Filing every affidavit or other document brought into Court, and deposited in the Registry, not otherwise specified	0	2	6
Filing and entry of remission of appeal	0	2	6

Attendance with Books, &c.

For every attendance with any book or original document in any of the Courts of law or equity in London or Westminster, or elsewhere within three miles of the Principal Registry	1	1	0
For second and each subsequent attendance in the same term or sittings after term	0	10	6
For every attendance with books or documents in any of the Courts of law or equity in London or Westminster, or elsewhere within three miles of the Principal Registry, when more than one book or document are required, for each book or document besides the first	0	5	0
For the second and each subsequent attendance in the same term or sittings after term, for each book or document besides the first	0	2	6
For each day's attendance with any book or original document in any of the Courts of law or equity, or elsewhere beyond the distance of three miles from the Principal Registry, exclusive of travelling expenses	1	1	0

For each day's attendance with books or documents in any of the Courts of law or equity, or elsewhere beyond the distance of three miles from the Principal Registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first	£	s.	d.
The travelling expenses to be advanced and paid to the messenger attending with wills, books, or original documents, shall include all other necessary expenses which are to be or may have been incurred by such messenger.	0	5	0

Office Copies and Extracts.

For every office copy or extract of a minute, order, decree, or other document filed or deposited in the Principal Registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, per folio	0	0	6
For office copy of a minute, order, decree, or other document under seal of the Court for which no other fee is payable :			
For the seal, in addition to the fee for the copy and collating	0	5	0

Receipts.

For every receipt for a document or documents delivered out of the Principal Registry	0	1	0
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Searches in Court Books.

Search in each Court book, if within the last five years	0	1	0
If at an earlier period than within the last five years	0	2	6

Taxing Costs.

Taxing every bill of costs :			
When taxed as between party and party, per folio of seventy-two words each	0	0	6
When taxed as between practitioner and client, per folio of seventy-two words each	0	1	0
The fee for taxing every bill of costs shall be due from each party heard on the taxation thereof.			
For postponement of appointment for taxation of costs, to be paid by the party at whose instance the appointment is postponed :			
If the bill of costs is five folios of seventy-two words or under	0	1	0
If exceeding five folios of seventy-two words and under fifteen folios	0	2	6
If exceeding fifteen folios	0	5	0

Appointments of Officers.

For admission of a proctor	1	1	0
For each appointment of a commissioner in the Court of Probate	1	0	0
For registering the appointment of a commissioner appointed to take oaths in the Court of Chancery	0	5	0

Oath.

For every oath administered by a Registrar to each deponent ..	0	1	0
For marking every exhibit	0	1	0

COSTS

TO BE ALLOWED PROCTORS, SOLICITORS, AND ATTORNEYS
PRACTISING IN THE COURT OF PROBATE^(a),

IN

NON-CONTENTIOUS BUSINESS.

In respect of Probates.

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engrossing and collating the Will, three folios of ninety words or under, including parchment.	Probate under Seal.	Extract- ing.	Clerks.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	4 6	0 1 0	1 0	—
20	2 6	2 6	4 6	0 1 0	3 4	0 1 0
100	5 0	5 0	4 6	0 1 0	6 8	0 2 0
200	6 8	6 8	4 6	0 3 0	6 8	0 2 0
300	10 0	10 0	4 6	0 7 6	6 8	0 2 0
450	10 0	10 0	4 6	0 12 0	6 8	0 2 0
600	10 0	10 0	4 6	0 16 6	6 8	0 2 0
800	10 0	10 0	4 6	1 2 6	6 8	0 2 0
1,000	10 0	10 0	4 6	1 13 0	6 8	0 2 0
1,500	10 0	10 0	4 6	2 5 0	6 8	0 5 0
2,000	10 0	10 0	4 6	3 0 0	6 8	0 5 0
3,000	10 0	10 0	4 6	3 15 0	13 4	0 5 0
4,000	10 0	10 0	4 6	4 10 0	13 4	0 5 0
5,000	10 0	10 0	4 6	4 15 0	13 4	0 7 6
6,000	10 0	10 0	4 6	5 0 0	13 4	0 7 6
7,000	10 0	10 0	4 6	5 5 0	13 4	0 7 6
8,000	10 0	10 0	4 6	5 10 0	13 4	0 7 6
9,000	10 0	10 0	4 6	5 15 0	13 4	0 7 6
10,000	10 0	10 0	4 6	6 0 0	13 4	0 7 6
12,000	10 0	10 0	4 6	6 5 0	13 4	0 7 6
14,000	10 0	10 0	4 6	6 10 0	13 4	0 7 6
16,000	10 0	10 0	4 6	6 17 6	13 4	0 7 6
18,000	10 0	10 0	4 6	7 5 0	13 4	0 7 6
20,000	10 0	10 0	4 6	7 12 6	13 4	0 7 6
25,000	10 0	10 0	4 6	8 2 6	13 4	0 7 6
30,000	10 0	10 0	4 6	8 15 0	13 4	0 7 6
35,000	10 0	10 0	4 6	9 7 6	13 4	0 7 6
40,000	10 0	10 0	4 6	10 6 3	13 4	0 7 6
45,000	10 0	10 0	4 6	11 5 0	13 4	0 7 6
50,000	10 0	10 0	4 6	12 3 9	13 4	0 7 6

(a) These fees being identical with those taken in the District Registries (with trifling exceptions which are noticed) are only printed once.

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engrossing and collating the Will, three folios of ninety words or under, including parchment.	Probate under Seal.	Extracting.	Clerks.
£	s. d.	s. d.	£ s. d.	£ s. d.	s. d.	£ s. d.
60,000	10 0	10 0	4 6	13 2 6	13 4	0 7 6
70,000	10 0	10 0	4 6	15 0 0	13 4	0 7 6
80,000	10 0	10 0	4 6	16 17 6	13 4	1 1 0
90,000	10 0	10 0	4 6	18 15 0	13 4	1 1 0
100,000	10 0	10 0	4 6	20 12 6	13 4	1 1 0
120,000	10 0	10 0	4 6	21 11 3	13 4	1 1 0
140,000	10 0	10 0	4 6	23 8 9	13 4	1 1 0
160,000	10 0	10 0	4 6	25 6 3	13 4	1 1 0
180,000	10 0	10 0	4 6	27 3 9	13 4	1 1 0
200,000	10 0	10 0	4 6	29 1 3	13 4	1 1 0
250,000	10 0	10 0	4 6	30 18 9	13 4	1 1 0
300,000	10 0	10 0	4 6	35 12 6	13 4	1 1 0
350,000	10 0	10 0	4 6	40 6 3	13 4	1 1 0
400,000	10 0	10 0	4 6	41 17 6	13 4	1 1 0
500,000	10 0	10 0	4 6	43 8 9	13 4	1 1 0

And for every additional 100,000 <i>l.</i> , or any fractional part of 100,000 <i>l.</i> , under which the personal estate is sworn, in addition to the above fees, a further fee for probate under seal, of	£	s.	d.
For engrossing and collating the will, if more than three folios of ninety words each, per folio, including parchment..	3	2	6
When there are two or more executors, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit—	0	1	6
If the effects are sworn under 20 <i>l.</i>	0	2	6
If the effects are sworn under 100 <i>l.</i>	0	5	0
If the effects are sworn above 100 <i>l.</i>	0	6	8

In respect of Letters of Administration with Will annexed.

In addition to the above fees, for preparing and attendance on the execution of the bond if the effects are—	s.	d.
Under 20 <i>l.</i>	2	6
20 <i>l.</i> and under 100 <i>l.</i>	6	8
100 <i>l.</i> and upwards	10	0

For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed, when there are pencil-marks in the will or codicil, or when the will or codicil is to be registered fac-simile, in addition to any other fee for engrossing and collating the same—	£	s.	d.
If the pencil-marks in the will or codicil, or in the part or parts thereof to be registered fac-simile are two folios of ninety words in length or under	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words	0	0	6

B.

P P

In respect of Letters of Administration.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Letters of Administration under seal.	Extracting.	Clerks.
£	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	0 1 0	1 0	—
20	3 4	2 6	0 1 0	3 4	0 1 0
50	5 0	5 0	0 1 6	4 8	0 2 0
100	6 8	6 8	0 3 0	6 8	0 2 0
200	10 0	6 8	0 4 6	6 8	0 2 0
300	13 4	10 0	0 12 0	6 8	0 2 0
450	13 4	10 0	0 16 6	6 8	0 2 0
600	13 4	10 0	1 2 6	6 8	0 2 0
800	13 4	10 0	1 13 0	6 8	0 2 0
1,000	13 4	10 0	2 5 0	6 8	0 5 0
1,500	13 4	10 0	3 7 6	6 8	0 5 0
2,000	13 4	10 0	4 10 0	13 4	0 5 0
3,000	13 4	10 0	4 13 9	13 4	0 7 6
4,000	13 4	10 0	4 17 6	13 4	0 7 6
5,000	13 4	10 0	5 5 0	13 4	0 7 6
6,000	13 4	10 0	5 12 6	13 4	0 7 6
7,000	13 4	10 0	6 0 0	13 4	0 7 6
8,000	13 4	10 0	6 7 6	13 4	0 7 6
9,000	13 4	10 0	6 15 0	13 4	0 7 6
10,000	13 4	10 0	7 2 6	13 4	0 7 6
12,000	13 4	10 0	7 10 0	13 4	0 7 6
14,000	13 4	10 0	7 17 6	13 4	0 7 6
16,000	13 4	10 0	8 8 9	13 4	0 7 6
18,000	13 4	10 0	9 0 0	13 4	0 7 6
20,000	13 4	10 0	9 11 3	13 4	0 7 6
25,000	13 4	10 0	10 6 3	13 4	0 7 6
30,000	13 4	10 0	11 5 0	13 4	0 7 6
35,000	13 4	10 0	12 3 9	13 4	0 7 6
40,000	13 4	10 0	13 11 3	13 4	0 7 6
45,000	13 4	10 0	15 0 0	13 4	0 7 6
50,000	13 4	10 0	16 7 6	13 4	0 7 6
60,000	13 4	10 0	17 16 3	13 4	0 7 6
70,000	13 4	10 0	20 12 6	13 4	0 7 6
80,000	13 4	10 0	23 8 9	13 4	1 1 0
90,000	13 4	10 0	26 5 0	13 4	1 1 0
100,000	13 4	10 0	29 1 3	13 4	1 1 0
120,000	13 4	10 0	30 9 6	13 4	1 1 0
140,000	13 4	10 0	33 5 9	13 4	1 1 0
160,000	13 4	10 0	36 2 0	13 4	1 1 0
180,000	13 4	10 0	38 18 3	13 4	1 1 0
200,000	13 4	10 0	41 14 6	13 4	1 1 0
250,000	13 4	10 0	44 10 9	13 4	1 1 0
300,000	13 4	10 0	46 17 6	13 4	1 1 0
350,000	13 4	10 0	49 4 6	13 4	1 1 0
400,000	13 4	10 0	51 11 3	13 4	1 1 0
500,000	13 4	10 0	53 18 3	13 4	1 1 0

And for every additional 100,000*l.*, or any fractional part of 100,000*l.*, under which the personal estate is sworn, in addition to the above fees, a further fee for letters of administration under seal of 4 13 6

When there are two or more administrators, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit, and on execution of the bond—

If the effects are under 20 <i>l.</i>	..	..	..	0	3	4
If the effects are under 100 <i>l.</i>	..	..	..	0	5	0
If the effects are above 100 <i>l.</i>	..	..	..	0	10	0

In addition to the above fees, for preparing bond if the effects are—

Under 20 <i>l.</i>	..	..	..	..	0	1	8
20 <i>l.</i> and under 50 <i>l.</i>	..	..	..	..	0	3	4
50 <i>l.</i> and under 100 <i>l.</i>	..	..	..	..	0	5	0
100 <i>l.</i> and upwards	..	..	..	..	0	6	8

In respect of Double or Cessate Probates.

If the effects are sworn under	Attendance in the Registry, and looking up the Will and bespeaking the engrossment.	Oath of the executor and his being sworn.	Affidavit for Inland Revenue Office, and attendance on the executor being sworn.	Drawing and copying statement in support of application for the duty-paid Stamp.	Attending the Commissioners of Stamps and procuring the duty-paid Stamp.	Double or Cessate Probate under Seal.	Extracting.	Clerks.
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
5	3 4	2 6	2 6	—	—	1 0	1 0	—
20	3 4	2 6	2 6	—	—	1 0	3 4	1 0
100	6 8	5 0	5 0	6 8	13 4	1 0	6 8	2 0
200	6 8	6 8	6 8	6 8	13 4	3 0	6 8	2 0
300	6 8	10 0	10 0	6 8	13 4	7 6	6 8	2 0
450	6 8	10 0	10 0	6 8	13 4	12 0	6 8	2 0
600	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
800	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,500	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
2,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
3,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
4,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
5,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	7 6
Above 5,000								

The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of 70,000*l.* or upwards, is 1*l.* 1*s.*

The above fees for drawing and copying the statement in support of application for the duty-paid stamp is to be taken when the statement is five folios of seventy-two words or under. If the statement exceeds five folios, for each additional folio of seventy-two words
 When there are two or more executors to be sworn, and they are not sworn at the same time, for each attendance after the first on their being sworn, the same fee as on a first grant under the same *ann.*

Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	s.	d.
Attending in the Registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification	0	6	8
Exemplification under seal and stamp	1	1	0
Extracting	0	6	8
Clerks	0	2	6

In respect of Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

	£	s.	d.
Attending in the Registry, looking up the will, and bespeaking duplicate or triplicate of a grant and engrossment	0	6	8
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp : The same fee as on a double or cessate probate.			
Attending at the Inland Revenue Office and procuring the duty-paid stamp	0	13	4
Duplicate or triplicate probate or letters of administration with or without will annexed. If the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the original grant. If the personal estate is of the value of 450 <i>l.</i> and upwards .	0	12	6
Extracting	0	6	8
Clerks	0	2	6

In respect of Letters of Administration with or without Will annexed de bonis non or Cessate.

If the effects are sworn under	Attending in the Registry, looking up and perusing the Will, and taking an account of the former Grant.	Oath of the Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office, and attendance on Administrator being sworn.	Drawing and copying Statement in support of application to the Inland Revenue Office for the duty-paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De bonis or cessate administration with or without Will under Seal and duty-paid Stamp.	Extracting.	Clerks.
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
£ 5	6 8	5 0	2 6	—	—	1 0	1 0	—
20	6 8	5 0	2 6	—	—	1 0	3 4	1 0
50	6 8	6 8	5 0	—	—	1 6	4 8	2 0
100	6 8	10 0	6 8	5 0	6 8	3 0	6 8	2 0
200	6 8	13 4	6 8	6 8	13 4	4 6	6 8	2 0
300	6 8	16 8	10 0	6 8	13 4	12 0	6 8	2 0
450	6 8	16 8	10 0	6 8	13 4	12 6	6 8	2 0
Above 450								
The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1,500 <i>l.</i> and upwards, is 13 <i>s.</i> 4 <i>d.</i> , and the clerk's fee, which, if the effects are 600 <i>l.</i> and upwards, is 5 <i>s.</i>								

£ s. d.

If there has been more than one previous grant, for each grant looked up after the first, a further fee of
 The above fee for drawing and copying the statement in support of application to the Inland Revenue Office for the duty-paid stamp is to be taken if the statement is five folios of seventy-two words or under. If it exceeds five folios, for each additional folio

In addition to the above, for preparing the bond, and for each attendance after the first on the administrators being sworn, and on execution of the bond, when there are two or more administrators and they are not sworn at the same time, the same fees as on ordinary grants of letters of administration.

In respect of Probates, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Affidavit for Inland Revenue Office and attendance on the executor being sworn thereto:—The same fee as on ordinary probates.			
Drawing special oath of executor, per folio of seventy-two words	0	1	0
Fair copy of the oath for the Registrar (<i>or</i> District Registrar, <i>as the case may be</i>), per folio of seventy-two words	0	0	4
Attending the Registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Each attendance on the executors being sworn	0	6	8
Engrossing and collating the will	The same fees as on ordinary probates.		
Special or limited probate, under seal			
Extracting			
Clerks			

In respect of Letters of Administration with or without Will annexed, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of seventy-two words	0	0	4
Proxy of nomination	0	13	4
Affidavit for Inland Revenue Office and attendance on the administrators being sworn thereto:—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrators, per folio of seventy-two words	0	1	0
Fair copy of the oath for the Registrar (<i>or</i> District Registrar, <i>as the case may be</i>) to peruse, per folio of seventy-two words	0	0	4
Attending the Registrar (<i>or</i> District Registrar, <i>as the case may be</i>) thereon	0	13	4
Engrossing same per folio of seventy-two words	0	0	4
Each attendance on the administrators being sworn, and on execution of the bond	0	6	8
Engrossing and collating the will	The same fees as on ordinary grants of letters of administration, with or without will annexed.		
Letters of administration under seal and stamp			
Extracting			
Clerks			

Office Copies of, or Extracts from, Records, Wills, and other Documents.

	£	s.	d.
For attendance in the Registry and searching for a record, will, or other document, or for a grant of probate, or letters of administration, with or without will annexed, for five years, or any period less than five years, <i>including</i> the ordering of a copy	0	5	0
For every five years after the first five years	0	3	4
For the perusal of a record, will, or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	0	4

For collating an office copy or extract of a record, will, or other document, with the original, or a registered copy thereof, including extracting fee, per folio of ninety words	£	s.	d.
For collating an office copy of the act on granting probate or administration with the original entry thereof, including extracting fee	0	0	2
	0	1	0

Caveats.

For attendance in the Registry (or District Registry, as the case may be) and entering or subducing a caveat	0	6	8
For attendance in the Registry (or District Registry) and giving instructions for warning caveators to enter an appearance (a)	0	6	8
For service of warning to a caveat, and copy	0	5	0

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration; and Declarations of Personal Estate and Effects.

For taking instructions for every affidavit or declaration of personal estate and effects	£	s.	d.
For drawing and fair copy of the same, per folio of seventy-two words	0	6	8
For every attendance on the deponents or declarants being sworn or affirmed to such affidavit or declaration	0	1	4
	0	6	8

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents.

For taking instructions for every instrument of renunciation or consent, letters of attorney, or other document	£	s.	d.
For drawing and fair copy thereof, per folio of seventy-two words	0	6	8
	0	1	4

For Commissioners of the Court.

For each oath administered to each deponent by a commissioner, surrogate, or other person authorized to administer oaths in the Court of Probate	0	1	6
For marking each exhibit	0	1	0
For each occasion of superintending and attesting the execution of a bond	0	1	6

Taxing Bill of Costs.

For attendance on taxation of bill of costs (b)	0	6	8
If long, such further fee as the Registrar may think proper.			

(a) This is not in the official list of costs allowed in the District Registries; obviously, because caveats are always warned from the Principal Registry. Rule 9, C. B.

(b) Not included in the costs officially set out in the costs allowed in the District Registries.

Proctors, solicitors, and attornies are not entitled to any costs in addition to those allowed by the foregoing table in respect of the non-contentious business comprised therein; but in case of their transacting any business not therein provided for, they will be allowed as follows:—

	£	s.	d.
For instructions for any original instrument prepared by them..	0	6	8
For perusing every document which it is necessary to peruse as instructions, per folio of seventy-two words	0	0	4
For drawing and fair copy of any original instrument, per folio of seventy-two words	0	1	4
For every plain copy of a document, per folio of seventy-two words	0	0	4
If the same, or any part thereof, is to be copied <i>fac-simile</i> , for the part or parts to be so copied, per folio of seventy-two words, in addition to the above	0	0	2
For every necessary attendance on counsel, or on any practitioner or party other than their own client (c)	0	6	8

(c) Instead of client the words in the list set out in the District Registries are other than "*their own parties.*"

COSTS

TO BE ALLOWED PROCTORS, SOLICITORS, AND ATTORNEYS
PRACTISING IN THE COURT OF PROBATE

IN

COURT AND CONTENTIOUS BUSINESS.

<i>Citation.</i>	£	s.	d.
Citation, including præcipe	0	7	6
Citation to see proceedings, including præcipe	0	7	6
Certificate of service	0	2	6
Service of citation, if within two miles of the place of business of the practitioner or of the person employed to effect the service	0	5	0
If beyond that distance in addition for every mile one way .	0	1	0
Affidavit of service, if three folios of seventy-two words or under	0	5	0
If necessarily more than three folios, for every folio, includ- ing copy	0	1	4
In cases in which the person to be served shall avoid service, or the service shall be effected beyond the jurisdiction, except in Scotland and Ireland, such a sum to be allowed for service as the Registrar may consider reasonable under the circumstances.			
<i>Subpœna.</i>			
Subpœna ad testificandum, including præcipe	0	5	0
Subpœna duces tecum, or to bring in a script, if five folios of seventy-two words, or under, including præcipe	0	5	0
If necessarily exceeding five folios, for each additional folio of seventy-two words	0	1	0
Service of a subpœna. Same as citation.			
<i>Writ.</i>			
Writ of attachment, including præcipe	0	7	6
Writ of sequestration, including præcipe	0	7	6
Writ of fieri facias, including præcipe	0	7	6
<i>Instructions.</i>			
Instructions for citation, for pleadings, for interrogatories, for special affidavits, or for inventories	0	6	8
Ditto to defend suit	0	6	8
Ditto for brief, or case for hearing	0	13	4
If there are several witnesses and the brief is necessarily long an additional fee will be allowed.			
<i>Pleadings and Copies.</i>			
Drawing and engrossing declaration, if ten folios of seventy-two words or under	1	0	0
If exceeding ten folios, for every additional folio	0	1	4
Drawing and engrossing pleas, replications, demurrers, and other pleadings, except those simply joining or taking issue, if ten folios of seventy-two words or under	1	0	0
If exceeding ten folios, for every additional folio	0	1	4
Copies of declaration or other pleadings to file, at per folio of seventy-two words.. .. .	0	0	4

The Issue.

Drawing the issue, if fifteen folios, of seventy-two words or under, including copy	£	s.	d.
.. .. .	0	10	0
If exceeding fifteen folios, per folio, including copy	0	0	8

The Record.

Engrossing record to file, at per folio of seventy-two words, including parchment	0	0	6
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Special Case.

For case for motion, including fair copy for the Judge	0	10	0
If necessarily exceeding seven folios of seventy-two words in length, for every additional folio of seventy-two words, including copy	0	1	4
For case to advise on evidence, including copy for counsel ..	1	0	0
If the case exceeds ten folios in length, and it is shown that it could not be used as part of the brief or case for the hearing, an additional fee will be allowed.			

Drawing Instruments.

Drawing any instrument to be filed in or issued by the Registry for which no other fee is herein allowed, and for fair copy to be filed or issued, per folio of seventy-two words	0	1	4
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Perusing and abstracting.

For perusing and abstracting pleadings, testamentary papers, and exhibits of all kinds, per folio of seventy-two words	0	0	4
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Briefs and Cases for Hearing.

For drawing same, per folio of seventy-two words	0	1	0
For each copy, per folio of seventy-two words	0	0	4

Maps and Plans.

For maps or plans each from	1	1	0
	3	3	0
	0	10	0
Copies of same, if required each from	1	0	0

Affidavits.

Drawing affidavit:			
If five folios of seventy-two words or under, including copy for the Court or Registry	0	6	8
If above five folios, per folio including copy	0	1	4

Interrogatories.

For drawing the same, at per folio of seventy-two words, and copy for the court	0	1	4
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Copies.

For every plain copy of a script, exhibit, or other instrument per folio of seventy-two words	0	0	4
If the same or any part thereof are required to be made <i>fac-simile</i> , for the part or parts copied <i>fac-simile</i> , in addition to the above per folio of seventy-two words	0	0	2
All copies on parchment, per folio of seventy-two words including the parchment	0	0	6

Collating.

For collating any copy of a script, exhibit, or other instrument with the original, or with another copy thereof, per folio of seventy words, in addition to the fee for attendance	£	s.	d.
..	0	0	2

Notices.

All necessary notices, if three folios or under, inclusive of copy and service	0	5	0
If necessarily exceeding three folios, for every additional folio	0	1	0
In all cases where service of a notice is necessary beyond two miles of the place of business of the practitioner, the same fee as upon the service of a citation.			

Summonses.

Drawing summonses	0	3	4
Copy of summonses or order of the Judge, and service	0	5	0

Attendances.

For attendance on and seeing counsel, when the fee is one guinea	0	3	4
When the fee exceeds one guinea and is under five guineas	0	6	8
When the fee is five guineas and upwards	0	13	4
Attendance on consultation	0	13	4
Attendance on conference	0	6	8
Attendance in pursuance of notice to admit	0	6	8
For every hour after the first	0	6	8
Attendance on trial or hearing when cause is in paper and not tried or heard, or on motion in court	0	13	4
On trial or hearing	1	1	0
If it lasts the whole day	2	2	0
Attendance on examination of witnesses under a commission or order—			
If in England or Wales, per diem	2	2	0
If elsewhere	3	3	0
For all necessary attendances in chambers before the Judge or before a commissioner, on counsel, in the Registry or upon the adverse parties or practitioner, for which no other fee is herein allowed	0	6	8

Term Fees, Letters, and Messengers.

Term fee, letters, and messengers, for each term in which any business is done in Court or in chambers other than obtaining an order for taxation, or attending the taxation of bills of costs	0	15	0
For every necessary letter written to any person other than the practitioner's own client	0	3	6

Bills of Costs.

Drawing bill of costs and copy for taxation, per folio of seventy-two words	0	1	0
Copy for the adverse party, per folio of seventy-two words	0	0	4
Attendance on taxation of bill of costs	0	13	4
If necessarily above an hour, for each additional hour or part of an hour	0	6	8
If in any Court or contentious business it should become necessary for proctors, solicitors, or attorneys to transact any business for which no fee is herein specified, such fee shall be allowed to them as would be allowed for similar business done in the Courts of Common Law and Equity.			

COSTS

TO BE ALLOWED PROCTORS, SOLICITORS, AND ATTORNIES
PRACTISING IN THE COURT OF PROBATE

IN

CONTENTIOUS BUSINESS.

FOR THE USE OF OTHER PERSONS.

Counsel's Clerks' Fees.

						£	s.	d.
Not to exceed as under								
Upon a fee to counsel under 5 guineas	..	..	..	..	..	0	2	6
5 guineas and under 10 guineas	..	..	..	..	..	0	5	0
10 guineas and under 20 guineas	..	..	..	..	..	0	10	0
20 guineas and under 30 guineas	..	..	..	..	..	0	15	0
30 guineas and under 50 guineas	..	..	..	..	..	1	0	0
50 guineas and upwards—at per cent. on the fee paid	..	..	..	..	..	2	10	0
On consultations:								
Senior's clerk	..	..	..	..	..	0	7	6
Jnnior's clerk	..	..	..	..	..	0	2	6
On general retainer	..	..	..	..	..	0	10	6
On common retainer	..	..	..	..	..	0	2	6
On conference	..	..	..	..	..	0	5	0

Witnesses' Expenses.

Allowance to witnesses, including their board and lodging, as
between party and party:

Common witnesses, such as labourers, journeymen, &c. &c.:

If resident within five miles of the General Post Office,								
per diem	..	..	..	..	..	0	5	0
If beyond that distance, per diem						0	7	6

Master tradesmen, yeomen, farmers, &c.:

If resident within five miles of the General Post Office,								
per diem	..	..	..	..	..	0	10	0
If resident beyond that distance, per diem						0	15	0

Auctioneers and accountants:

If resident within five miles of the General Post Office,								
per diem	..	..	..	..	..	1	1	0
If resident beyond that distance, per diem						2	2	0

Professional men, including notaries, engineers, and surveyors, &c.:

If resident within five miles of the General Post Office,								
per diem	..	..	..	..	..	1	1	0
If resident beyond that distance, per diem						3	3	0

Clerk to attornies or others:

If resident within five miles of the General Post Office,								
per diem	..	..	..	..	..	0	10	6
If resident beyond that distance, per diem						1	1	0

Esquires, bankers, merchants, and gentlemen, per diem

Allowance to witnesses—*continued*.

Females according to station in life :

	£	s.	d.
If resident within five miles of the General Post Office,	0	5	0
per diem, from	0	10	0
	0	7	6
If resident beyond that distance, per diem, from.. ..	1	0	0

Police inspector :

If resident within five miles of the General Post Office,			
per diem	0	7	6
If resident beyond that distance, per diem	0	10	0

Police constable :

If resident within five miles of the General Post Office,			
per diem	0	5	0
If resident beyond that distance, per diem	0	7	6

The travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid; but in no case will there be an allowance for such expenses of more than 1s. per mile one way.

Commissioners of the Court.

Commissioners of the Court for administering each oath to each

deponent	0	1	6
For marking each exhibit	0	1	0

COSTS IN COUNTY COURT.

	In actions of <i>debt</i> or <i>contract</i> exceeding 20 <i>l</i> .	In actions of <i>tort</i> where damages recovered exceed 20 <i>l</i> .	In actions under sects. 11 & 12 of the County Courts Act, 1867.
	£ s. d.	£ s. d.	£ s. d.
Letter before action (a)	0 3 6	0 3 6	0 3 6
Instructions to sue or defend	0 6 8	0 6 8	0 13 4
Perusing deeds and documents when long, not exceeding .. .. .	..	..	2 2 0
Attendance and entering plaint, including particulars and copies, such particulars and copies being signed by the attorney .	0 13 4	0 13 4	0 13 4
Preparing affidavit and filing, including notice of mode in which payment will be accepted	0 6 8	..	..
Copy and service of summons, if served by plaintiff, his attorney, or clerk, or servant of either of them, within two miles of the place of business of the plaintiff or at- torney	0 5 0	..	..
If beyond that distance additional for every mile but <i>not to exceed</i> 10 miles	0 0 6	..	..
Affidavit of service, with copy of summons annexed	0 5 0	..	..
Attending to file affidavit of service, in- cluding entering up judgment by default N.B.—The total amount of these items where applicable to be entered on the summons.	0 3 4	..	..
Attending lodging Judge's order, and pre- paring statement of cause of action or defence, including copies, and lodging same with Registrar, if signed by attorney (sections 7 and 10 of "The County Courts Act, 1867")	0 13 4	0 13 4	..
Examining and taking minutes of evidence of each witness afterwards allowed by the Judge	0 3 4	0 3 4	0 6 8
If more than six folios, every additional folio (whether counsel employed or not)	0 1 0	0 1 0	0 1 0
Drawing brief for counsel, per folio ..	0 1 0	0 1 0	0 1 0
Copy brief, per folio, and necessary docu- ments to accompany same	0 0 4	0 0 4	0 0 4
Attending counsel therewith	0 3 4	0 3 4	0 3 4
If conference with counsel allowed, appoint- ing it and attending counsel .. ..	..	..	0 13 4

(a) Before the 19 & 20 Vict. c. 108, these costs were regulated by the 13 & 14 Vict. c. 61, s. 6, and the 15 & 16 Vict. c. 54, s. 1, which are now repealed.

	In actions of debt or contract exceeding 20 <i>l</i> .	In actions of tort where damages recovered exceed 20 <i>l</i> .	In actions under sects. 11 & 12 of the County Courts Act, 1867.
	£ s. d.	£ s. d.	£ s. d.
Fee to counsel and clerk, sum paid not exceeding	3 5 6	3 5 6	5 10 0
Fee to counsel and clerk, on conference .. .. .	..	..	1 6 0
Attending Court and conducting cause, where no counsel employed	1 10 0	1 10 0	2 2 0
Where judgment is deferred, attending Court to hear it	0 6 8	0 6 8	0 6 8
Plans and models where necessary for use at hearing, by special order on taxation, not exceeding	2 2 0	2 2 0	2 2 0
Witnesses' expenses, according to scale in force .. .. .	..	..	..
Attending taxing costs	0 6 8	0 6 8	0 6 8
<i>Occasional Costs.</i>			
Notice to produce, notice to admit,—notice of application for a new trial, or to set aside proceedings,—including copies or duplicate originals and service,—and notice of special defence and copies, including particulars, and copies in cases of set-off, and attending Registrar of the Court therewith, such notices, particulars, and copies being signed by the attorney ..	0 6 8	0 6 8	0 13 4
On receipt of notice to produce or admit or to answer interrogatories perusing same, and advising thereon	0 6 8	0 6 8	0 13 4
All applications and motions, or attending Court to answer applications and motions under sections 50, 51, 52 and 53 of "The Common Law Procedure Act, 1854"	0 6 8	0 6 8	0 6 8
Drawing interrogatories and answer thereto under section 51 of last act	0 5 0	0 5 0	0 5 0
If more than five folios, per folio	0 1 0	0 1 0	0 1 0
Attending examination under section 63 of last act	0 6 8	0 6 8	0 6 8
Attending inspecting documents	0 6 8	0 6 8	{ 0 6 8 per hour.
Mileage, one way, from the attorney's place of business to place of inspection of documents, for each mile, not exceeding, unless by special order of Judge, in the whole 20 miles	0 1 0	0 1 0	0 1 0
All necessary affidavits, not exceeding five folios, including filing, each	0 5 0	0 5 0	0 5 0
For every additional folio	0 1 0	0 1 0	0 1 0
Oath; sum paid .. .. .	..	..	..
Attending Court for an order to bring up a prisoner to give evidence	0 4 0	0 4 0	0 4 0

	In actions of <i>debt</i> or <i>contract</i> exceeding 20 <i>l</i> .	In actions of <i>tort</i> where damages recovered exceed 20 <i>l</i> .	In actions under sects. 11 & 12 of the County Courts Act, 1867.
	£ s. d.	£ s. d.	£ s. d.
Attending Court to support or oppose motion for new trial, or motion to set aside proceedings, or motion for a change of venue, including instructions, or any other necessary attendance, where no counsel employed	1 1 0	1 1 0	1 1 0
Attending in the last-mentioned cases with counsel	0 10 0	0 10 0	0 13 4
Fee to counsel and clerk in such cases, sum paid (not exceeding)	2 4 6	2 4 6	3 5 6
All necessary applications and motions to the Court not otherwise provided for, including instructions and all attendances ..	..	..	0 13 4
Attorney's travelling expenses to attend Court, one way, not exceeding 20 miles, per mile	0 1 0	0 1 0	0 1 0
Where in the opinion of the Registrar he cannot return the same night, in addition to the above mileage	1 11 6	1 11 6	1 11 6
Any attendance at the office of the Registrar, or any attendance upon the opposite party, which the Registrar may, upon taxation, think was necessary	0 3 4	0 3 4	0 3 4
All costs for letters, and for searches for certificates of births, marriages, and deaths which the Registrar may upon taxation think necessary, such sum as the Registrar shall deem reasonable.			
Fees and copies; sum paid.	0 0 4	0 0 4	0 0 4
All necessary copies, per folio	0 0 4	0 0 4	0 0 4
<i>Case.</i>			
Drawing case, per folio .. .. .	..	..	0 1 0
Perusing and settling case prepared by the other party in action, per folio .. .. .	..	..	0 0 6
Drawing briefs for counsel to argue case ..	..	..	1 1 0
Attending counsel with brief .. .. .	..	..	0 3 4
Fee to counsel upon brief, sum paid not exceeding .. .. .	..	..	3 5 6
Attending Court when counsel employed ..	..	..	1 1 0
Attending Court when counsel not employed ..	..	..	0 15 0
<i>Costs of the Day on Adjournment of Cause.</i>			
Attorney for attending Court where no counsel employed	0 15 0	0 15 0	0 15 0
Attending with counsel	0 10 0	0 10 0	0 13 4
Refresher fee to counsel and clerk	1 3 6	1 3 6	1 3 6
Witnesses' expenses, same as on trial.			

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	In actions of debt or contract exceeding 20 <i>l</i> .	In actions of tort where damages recovered exceed 20 <i>l</i> .	In actions under sects. 11 & 12 of the County Courts Act, 1867.
	£ s. d.	£ s. d.	£ s. d.
<i>Arbitration.</i>			
Attending reference, without counsel, for each sitting	1 0 0	1 0 0	1 0 0
Attending reference, with counsel, for each sitting	0 15 0	0 15 0	0 15 0
Where sitting exceeds four hours, for every additional hour	0 6 8	0 6 8	0 6 8
Fee to counsel and clerk, for each sitting, sum paid, not exceeding	2 4 6	2 4 6	2 4 6
Witnesses' expenses, same as on a trial.			
<i>Note.</i> —Costs of counsel and attorney, or of an attorney on attending reference, shall not be allowed without the order of the judge; nor shall the costs of more than one sitting be allowed without the order of the judge.			
<i>New Trial.</i>			
Costs to be allowed on the same scale as on the original trial.			
COSTS ON APPEALS.			
Preparing notice of appeal, including copies and service	0 5 0	0 5 0	0 10 0
Paying money into Court as deposit on appeal, including notice and service thereof	0 3 0	0 3 0	0 3 0
Notice of nature and particulars of proposed security, including copies and service	0 5 0	0 5 0	0 5 0
Notice of Court to which appeal to be made	0 3 0	0 3 0	0 3 0
Preparing case, including copies	0 10 0	0 10 0	1 1 0
Attending Judge to sign, or to settle and sign	0 6 8	0 6 8	0 6 8
Transmitting and depositing copies of case to party, and with Registrar	0 5 0	0 5 0	0 5 0
Transmitting case and copies to Court of appeal, including notice thereof to successful party	0 7 0	0 7 0	0 7 0
Application to Judge for leave to proceed on the judgment	0 5 0	0 5 0	0 7 0
Depositing order of Court of Appeal, including notice and service thereof	0 3 4	0 3 4	0 6 8

Where a new trial takes place in pursuance of the directions of the Court of Appeal, the costs of such new trial shall be allowed on the same scale as in the case of a new trial granted by the Judge of the County Court.

Actions under Section 2 of "The County Courts Act, 1867," where sum claimed exceeds 40s. and does not exceed 20l.

Preparing affidavit, swearing and filing, including notice of mode in which payment will be accepted	£	s.	d.
Copy and service of summons, if served by plaintiff, his attorney or clerk, or servant, or either of them, within two miles of the place of business of the plaintiff or attorney	0	5	0
If beyond that distance additional for every mile, but not to exceed 10 miles	0	5	0
Affidavit of service with copy of summons annexed, attending to file and entering up judgment by default	0	0	6
	0	6	8

N.B.—The costs in every cause shall upon the above scale abide the event, unless the Judge shall make some special order with reference to such costs or any part thereof.

The same costs and charges as are now paid to counsel and attorney in the County Courts under the provisions of section 33 of the Act 19 & 20 Vict. c. 108, shall be paid to counsel, proctors, solicitors and attorneys in respect of proceedings in the County Courts under the Acts 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, except that the fee to counsel and clerk may be a sum not exceeding 5l. 10s.

In pursuance of the powers vested in us by the Acts 19 & 20 Vict. c. 108, and 21 & 22 Vict. c. 95, we have framed the above, and we do hereby certify the same to the Lord Chancellor accordingly.

J. MANNING.
J. H. KOE.
E. COOKE.
J. WORLEDGE.
W. FURNER.

I approve of the above to come into force in all County Courts on the 11th day of January, 1859.

CHELMSFORD, C.

3 January, 1859.

Taxation of Costs.

All costs and charges between party and party must be taxed by the Registrar of the Court in which they were incurred, but his taxation may be reviewed by the Judge on the application of either party; and no costs or charges may be allowed on taxation which are not sanctioned by the scale then in force (*b*). Costs between attorney and client may also in the

(*b*) 19 & 20 Vict. c. 108, s. 34.

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same cases, on the application either of the attorney or client, but not otherwise, be taxed by the Registrar of the Court in which they were incurred, but his taxation may be reviewed by the Judge on the application of either party. Costs may not be allowed which are not sanctioned by the scale, unless the Registrar is satisfied that the client has agreed in writing to pay them, in which case they may be allowed; and no attorney may recover from his client any such costs unless they have been allowed, either on taxation, or on the taxation of a master of a superior court of common law or of the Court of Chancery (*e*).

The decision of the Judge, on reviewing the taxation of costs, cannot be appealed against to a superior Court (*d*), nor can a superior Court order the Judge of a County Court to direct that a taxation be reviewed (*e*).

When to be paid.

The Judge may make orders concerning the time or times, and by what instalments, any costs shall be paid. They must be paid into Court (*f*).

Execution for.

Execution may issue for the recovery of costs in the same manner as for a debt adjudged by the Court (*g*).

(*c*) 19 & 20 Vict. c. 108, s. 35.

(*d*) *Carr v. Stringer*, 1 E., B. & E. 123; *S. C.*, 4 Jur., N. S. 439.

(*e*) *Clifton v. Furley*, 7 H. & N.

783; *S. C.*, 31 L. J., Exch. 170.

(*f*) 19 & 20 Vict. c. 108, s. 45.

(*g*) 9 & 10 Vict. c. 95, s. 88.

APPENDIX IV.

EXAMPLES OF BILLS OF COSTS.

DEFENDANT'S BILL OF COSTS,

AS TAXED BETWEEN PARTY AND PARTY.

In her Majesty's Court of Probate.

In the goods of K ———, deceased.

K ——— v. M ———.

£	s.	d.	1866.	Michaelmas Term, 1866.	£	s.	d.
			Nov. 30.	Instructions for caveat	0	6	8
				Attending in the Registry entering same ..	0	6	8
				Paid for stamp	0	1	0
				On receipt of letter from Messrs. N. & C., plaintiff's solicitors, of street, request- ing me to hand them over all documents in my possession, as the testator E. K. had made a will on the 26th instant, revoking the will and codicil drawn by me, and thereby appointed Mrs. K. sole executrix; long attendance on testator's nephew D. K. thereon, and advising him and taking his instructions	0	13	4
2	2	0		Journey to to see Mr. M., the co-exe- cutor, and conferring and advising with him on the business, and taking his instructions	2	2	0
0	12	0		Horse hire and expenses	0	12	0
			Dec. 1.	Writing to Messrs. N. & C., in reply to their letter, that it would be premature to hand over the documents at present	0	3	6
0	13	4		Long attendance on Mr. K. and Mr. M., and conferring at length upon the alleged will of the 26th ulto., and advising them and taking instructions	0	13	4
0	6	8		3. Attending Mr. K. upon the business again this day, and advising on the course to be adopted	0	6	8
				5. Long attendance on Mr. M. and Mr. K., when they stated that Mr. and Mrs. D. wished to see me and make a statement, and arrang- ing to see Mr. and Mrs. D., and to take down their statement accordingly	0	13	4
1	1	0		Attending Mr. and Mrs. D. accordingly, and taking down their statements at length, en- gaged a long time	1	1	0
0	6	8		Attending Mr. M. afterwards thereon, and conferring and advising with him, and re- ceiving his instructions	0	6	8
				6. Attending on Mr. T., the local solicitor of Mrs. K., upon his calling upon behalf of Mr. N. for the key of the iron safe of the testator, and informing him that as it was banded to me by the testator, with some documents, as executor of his will, I could			

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1866. Dec. 6.		£	s.	d.
					not part with anything until Mrs. K. had produced to me the alleged will, showing her authority to ask for the same, when Mr. T. said it would not be produced, as it was not usual to do so.. .. .	0	6	8
				13.	Perusing warning served at the instance of the plaintiff	0	2	0
					Close copy sent	0	2	0
1	8	8			Having received warning to the caveat, journey to to see Mr. M. upon the business, and conferring and advising with him, and receiving his instructions	2	2	0
	0	12	0		Horse hire and expenses	0	12	0
	0	6	8		Attendance on Mr. K., conferring hereon, and arranging to see Mrs. I., one of the testator's nurses during his illness, and take down her statement	0	6	8
	0	6	8		Instructions for case for the opinion of counsel on future proceedings	0	13	4
	0	10	0		Drawing same and copy	1	10	0
	0	13	4		Attending Mrs. I., taking down her statement in the matter (engaged more than one hour)	0	13	4
	1	1	0		Preparing statement of my own evidence herein (engaged three hours)	1	1	0
	0	13	4		Attending Mr. K., taking down his statement herein, and arranging for Mrs. C., the other nurse during testator's illness, to see me to-morrow (engaged two hours)	0	13	4
	0	13	4		Attending Mrs. C., taking down her statement herein (engaged two hours).. .. .	0	13	4
	0	10	0		Making fair copy statement of myself to accompany case to counsel (three brief sheets)	0	10	0
	0	6	8		The like of Mr. D. (two brief sheets)	0	6	8
	0	13	4		The like of Mrs. D. (four brief sheets)	0	13	4
	0	6	8		The like of Mrs. I. (two brief sheets).. .. .	0	6	8
	1	0	0		The like of Mr. K. (six brief sheets).. .. .	1	0	0
	0	2	8		Fair copy will of the 17th October, to accompany (two brief sheets)	0	6	8
	0	2	0		The like of codicil of 12th Nov. (one brief sheet)	0	3	4
					Attending counsel with papers, &c.	0	6	8
					Paid his fee and clerk	3	5	6
				19.	Instructions to appear to warning on behalf of the defendants M. and T.	0	6	8
					Attending entering appearance	0	6	8
					Paid Court fee	0	2	6
					Notice of appearance to plaintiff's solicitors, copy and service	0	5	0
0	6	8		21.	On receipt of your letter, drawing further instruction for Mr. M., to advise and attending him	0	6	8
					Perusing opinion	0	5	0
					Close copy opinion	0	5	0
					Attending Mr. K., submitting to him Mr. M.'s opinion, and conferring with him thereon..	0	6	8
					Making copy of the opinions for Mr. M. ..	0	5	0
1	15	4			Journey to attending Mr. M. on counsel's further opinion, and conferring with him thereon and taking instructions ..	2	2	0

£	s.	d.	1866.		£	s.	d.	Defendant's Bill of Costs between Party and Party.
0	12	0	Dec. 21.	Horse hire and expenses	0	12	0	
0	6	8		Attending Mr. K. and Mr. M., receiving their instructions before dealing, to obtain an in- spection of the alleged will of the 26th Nov., and arranging	0	6	8	
				Instructions for affidavit of scripts	0	6	8	
				Drawing same	0	6	0	
				Fair copy	0	2	0	
				Attending making appointment with Mr. K., to go to to get him and Mrs. M. sworn	0	6	8	
1	8	8	24.	Journey to with Mr. K., attending Mr. M., and with him before commissioner to be sworn to affidavit	2	2	0	
				Paid commissioner's fees	0	4	6	
0	12	0		Horse hire and expenses	0	12	0	
				Letter to with the original documents, and attending to register the deed	0	5	0	
				Paid registration	0	1	0	
				Attending filing affidavit of script	0	6	8	
				Paid filing affidavit of two scripts	0	12	6	
				Notice of filing copy and service	0	5	0	
				Attending in the Principal Registry, bespeak- ing office copy of the plaintiff's affidavit of scripts, and of the scripts annexed	0	6	8	
				Paid for same and collating	0	4	0	
				Attending for the office copy	0	6	8	
				Perusing such affidavit of script and scripts	0	8	0	
				Close copy	0	8	0	
				On receipt of the same, attending Mr. M. and Mr. K., consulting with them on the busi- ness, and advising and taking instructions	0	6	8	
			1867.					
			Jan. 1.	Attending Mr. K. as to an interview with the D.'s, who stated that the plaintiff had been to them on the subject of the will, and advising	0	6	8	
0	3	6		Writing to Mr. M. on the matter, and on the course to be adopted, to prevent, if possible, the witnesses being tampered with	0	3	6	
				8. Attending Mr. K. and Mr. M., receiving in- structions to inspect the will and codicil, and waiting to arrange for such inspection	0	6	8	
				9. Attending in the Principal Registry inspect- ing the wills and codicils, and taking notes and writing to the country fully thereon	0	13	4	
2	2	0		On receipt of extracts and notes after the in- spection, attending at to see Mr. M. thereon, and conferring with him, and ad- vising and taking instructions	2	2	0	
0	12	0		Horse hire and expenses	0	12	0	
0	6	8		Attending Mr. K., consulting and conferring hereon, when it was arranged that he should go to to inspect the signatures of the will, &c. propounded by the plaintiff	0	6	8	
				Term fee	0	15	0	
<i>Hilary Term, 1867.</i>								
3	3	0	Jan. 11.	Journey to with Mr. K., and attend- ing at Doctors' Commons inspecting the will and codicil, and making notes, &c.	3	3	0	

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1867.		£	s.	d.
	2	2	0	Jan. 11.	Paid train and expenses	2	2	0
					Having received declaration, perusing same ..	0	3	4
					Close copy sent	0	3	4
					Perusing notice to plead	0	1	0
					Close copy sent			
					Booking papers to the country and messenger ..	0	1	8
				12.	Instructions for pleas	0	6	8
					Drawing and engrossing same for filing ..	1	0	0
0	6	8			Attending Mr. B., the medical attendant of the testator, when he stated he was of opinion that the testator was mentally in- capable of such a will on the 26th Novem- ber	0	6	8
0	10	0			Drawing special instructions for counsel to settle the pleas, &c.	0	10	0
					Fee to counsel to settle same	1	3	6
					Attending him	0	6	8
					Instructions for declaration by M. and T. ..	0	6	8
					Drawing same, and copy for filing	1	0	0
					Fee to counsel to settle same	1	3	6
					Attending him	0	6	8
0	6	8			Attending Mr. M. to appoint conference ..	0	6	8
1	6	0			Paid his fee and clerk	1	6	0
3	8	0		14.	Journey to to attend the conference, and conferring as to the necessity of an inventory of the testator's effects pending the proceedings, and generally on the course to be adopted by the executors; engaged all day	3	3	0
3	0	0			Travelling expenses	3	0	0
0	13	4		15.	Attending inspecting the will and codicil and script at Doctors' Commons, when matters occurred which rendered it necessary that we should have a further conference with counsel, and attending to appoint one ..	0	3	4
0	1	6			Paid conference fee and clerk	0	1	6
3	3	0			Attending conference in engaged all day	3	3	0
3	0	0			Train fare, &c.	3	0	0
				18.	Drawing and ingrossing summons to show cause why the defendants should not have a month's further time to plead	0	6	8
					Attending the Registrar, procuring his signa- ture thereto	0	6	8
					Paid stamp thereon	0	2	6
					Copy and service on the plaintiff's solicitors ..	0	5	0
					Attending summons at Judge's chambers when order made	0	6	8
					Attending to obtain order	0	6	8
					Court fee thereon	0	2	6
					Copy order and service on plaintiff's solicitors ..	0	5	0
					Close copy sent	0	2	0
0	13	4			Attending Mr. K. and my co-executor Mr. M., conferring very fully on the business and taking instructions	0	13	4
				19.	Attending the plaintiff's solicitors on their calling upon us to say they had omitted to file the declaration in the Registry, and they			

£ s. d. 1867.				£ s. d.	Defendant's Bill of Costs between Party and Party.
			Jan. 19. wished to substitute another declaration for that delivered on the 11th January, and we consented to receive it, and they were to send us notice not to plead to it former declaration delivered	0 6 8	
0	3	4	Perusing new declaration	0 3 4	
0	3	4	Close copy, new declaration sent	0 3 4	
0	1	0	The like of notice to plead	0 1 0	
0	6	8	Attending Mr. M. with the new declaration, and informing him of the omission of the plaintiff's solicitors, and that the new declaration was substituted for the one delivered on the 11th instant	0 6 8	
0	6	8	21. Attending Mr. K. on receipt of the close copy of the amended declaration and conferring and advising with him thereon, and Mr. K. wished the pleas to be delivered as soon as possible, and writing agents thereon	0 6 8	
			22. On receipt of letter attending Mr. M. to request him to let us have the pleas, &c. as soon as possible, which he promised to do	0 6 8	
			24. Close copy pleas, settled by Mr. M., sent	0 3 4	
			The like of declaration settled	0 3 4	
			Drawing particulars under the fourth plea and copy	0 6 0	
			Close copy sent	0 2 0	
			Fee to Mr. M. to settle same	1 3 6	
			Attending him	0 6 8	
			26. Drawing and ingrossing summons to show cause why the defendants should not have further time to plead	0 6 8	
			The like of summons to be at liberty to file a further affidavit of script	0 6 8	
			Attending the Registrar, procuring his signature thereto	0 6 8	
			The like for second summons	0 6 8	
			Paid stamps thereon	0 5 0	
			Copy and service of on the plaintiff's solicitors	0 5 0	
			The like of to be at liberty to file further affidavit of script	0 5 0	
			Instructions for affidavit in support of the	0 6 8	
			Drawing same and copy	0 10 0	
			Paid oath	0 1 6	
			Copy affidavit for the plaintiff's solicitors	0 3 4	
			Attending summons for further time, when order made by jury	0 6 8	
			Attending to obtain order	0 6 8	
			Court fee thereon	0 2 6	
			Copy order and service on the plaintiff's solicitors	0 5 0	
			Close copy same	0 2 0	
			Attending for leave to file further affidavit of script, when order made by Judge	0 6 8	
			Paid filing affidavit	0 2 6	
			Attending to obtain order	0 6 8	
			Court fee thereon	0 2 6	
			Copy order and service on the plaintiff's solicitor	0 5 0	

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1867.		£	s.	d.
				Jan. 26.	Close copy thereof	0	2	0
	0	6	8	28.	Attending Mr. K. and Mr. M. on the pleas, and drawing further instructions for counsel and copy	0	6	8
					Instructions for further affidavit of scripts ..	0	6	8
				29.	Drawing same	0	8	0
					Engrossing	0	2	8
					Writing to you with affidavit and attending to register letter containing the scripts to be annexed	0	3	4
					Paid registering and postage	0	6	8
					Attending to be sworn.. .. .	0	6	8
					Paid oaths and exhibits	0	5	6
					Attending to register the letter relating to the original documents, and paid	0	3	4
	0	6	8		Attending Mr. M. the co-executor, and Mr. K., conferring on these proceedings and advis- ing and taking instructions	0	6	8
				Feb. 1.	Attending filing further affidavit of script ..	0	6	8
					Paid filing affidavit and two scripts	0	12	6
					One of the scripts being in pencil, attending to get the same examined with a fair copy ..	0	6	8
					Making the fair copy	0	2	0
					Paid	0	1	0
					Paid fee for examining pencil script	0	3	0
					Notice of filing scripts and copy and service..	0	5	0
					Making a copy of the affidavit and scripts for the plaintiff's solicitors, fos. 46	0	15	4
					The like to keep before filing the originals ..	0	15	4
					Attending plaintiff's solicitors with affidavit of further scripts, &c.	0	6	8
					Attending in the Registry to file pleas and particulars	0	6	8
	0	5	0		Paid filing	0	10	0
					Notice of filing same, copy and service	0	5	0
					Copy particulars to deliver	0	2	0
					Attending in the Registry to file declaration ..	0	6	8
					Paid filing	0	5	0
	0	5	0		Notice of filing copy and service	0	5	0
					Notice to plead copy and service	0	5	0
	0	6	8	4.	On receipt of a letter from Messrs. N. that we had declared without warning the contract. Attending Mr. M. thereon, when he said it was quite immaterial whether we warned the caveat or no; but he advised us under the circumstances to do so, and writing you	0	6	8
					Instructions to warn the caveat	0	6	8
					Attending at the Registry, searching for the caveat for particulars for the warning ..	0	6	8
					Paid search	0	1	0
					Drawing warning to caveat and copy	0	6	8
					Attending to obtain Registrar's signature thereto	0	6	8
					Paid Court fees.. .. .	0	4	0
					Copy and service of warning	0	5	0
					Attending searching for appearance to warn- ing and paid	0	7	8

£	s.	d.	1867.	£	s.	d.	Defendant's Bill of Costs between Party and Party.
			Feb. 4. Having received notice of appearance to warn- ing, perusing same	0	2	0	
			Close copy sent	0	2	0	
0	6	8	7. Drawing and ingrossing summons to show cause why the pleas should not be dated the 8th February instead of the 1st, in con- sequence of the caveat being warned after pleas delivered	0	6	8	
0	6	8	Attending the Registrar, procuring his signa- ture thereto	0	6	8	
			Paid stamp thereon	0	2	6	
0	5	0	Copy and service on the plaintiff's solicitors..	0	5	0	
0	6	8	Attending summons at the Judge's Chambers, when order made	0	6	8	
0	6	8	Attending to draw up order	0	6	8	
0	2	6	Court fee thereon	0	2	6	
0	5	0	Copy order and service on the plaintiff's soli- citors	0	5	0	
0	2	0	Close copy sent	0	2	0	
0	6	8	9. Attending to file the order	0	6	8	
0	2	6	Paid filing	0	2	6	
			Perusing replication	0	2	0	
			Close copy, replication sent	0	2	0	
0	1	4	Perusing pleas to the defendant's declaration.	0	3	4	
0	1	4	Close copy sent	0	3	4	
0	1	4	Perusing plaintiff's second declaration sent ..	0	3	4	
0	1	4	Close copy sent	0	3	4	
			Perusing notice to plead	0	1	0	
			Close copy sent				
			Close copy of a letter from Messrs. N. as to applying to consolidate the actions sent ..	0		0	
			12. Instructions for pleas to plaintiff's second de- claration	0	6	8	
			Drawing same and copy	1	0	0	
			Fee to counsel to settle same	1	3	6	
			Attending him	0	6	8	
			Instructions for replication to the pleas to the defendant's declaration	0	6	8	
			Drawing same and copy	0	6	0	
			Fee to counsel to settle same	1	3	6	
			Attending him	0	6	8	
0	13	4	On receipt of a letter from agents enclosing close copies of the pleadings. Attending Mr. M. and Mr. K. thereon and conferring and advising	0	13	4	
0	1	4	16. Close copy pleas to plaintiff's second declara- tion sent	0	3	4	
			The like of replication to the pleas to the de- fendant's declaration	0	2	0	
			Attending to file same	0	6	8	
			Paid filing	0	5	0	
0	5	0	Notice of filing pleas to the plaintiff's second declaration	0	5	0	
0	1	4	Copy pleas to deliver	0	3	4	
			Attending delivering same to the plaintiff's attorneys	0	5	0	
			Copy replication to the pleas to the defendant's declaration to file	0	2	0	
			Attending to file same	0	6	8	

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1867.		£	s.	d.
				Feb. 16.	Paid filing	0	5	0
	0	5	0		Notice of filing copy and service	0	5	0
	0	6	8	19.	Attending Mr. M. to ascertain whether he had omitted the 5th plea, the one of undue influence, unintentionally, and writing you thereon	0	6	8
				26.	Perusing replication to the defendant's pleas to the plaintiff's second declaration sent	0	2	0
					Close copy sent	0	2	0
					The like of latter from Messrs. N. & Co.	0	1	0
				27.	On receipt of the above, attending Mr. K. and Mr. M. thereon, and conferring and advising with them	0	13	4
	0	6	8	Mar. 12.	Attending Mr. M. and Mr. K., receiving their instructions to transmit a telegram to you to have the business pressed on, and attending transmitting the same	0	6	8
	0	1	6		Paid for message	0	1	6
	0	6	8		Attending to appoint conference with	0	6	8
	1	6	0		Paid his fee and clerk	1	6	0
	0	6	8	26.	Attending Mr. M. and Mr. K., conferring thereon and receiving their instructions	0	6	8
	0	10	0		Drawing instructions for counsel to advise conference	0	10	0
	2	2	0		Journey to to attend conference with counsel, when, in consequence of his non-arrival, the same was put off until the morrow	2	2	0
	0	12	0		Horse hire and expenses	0	12	0
	2	2	0	27.	Journey to again and seeing counsel in conference	2	2	0
	0	12	0		Horse hire and expenses	0	12	0
	0	6	8		Attending Mr. M. and Mr. K. after the conference, and arranging that counsel should apply to have the cause tried before his lordship with a jury	0	6	8
				April 2.	Instructions for joinder of issue on the 2nd and 3rd replications of the plaintiff's to the pleas of the defendants to the plaintiff's second declaration	0	6	8
					Drawing same and copy	0	6	0
					Fee to counsel to settle same	1	3	6
					Attending him	0	6	8
					Attending Mr. M. and Mr. K., taking instructions as to retaining counsel	0	6	8
					Drawing instructions and attending to retain Mr. D. Paid his fee and clerk	1	3	6
				6.	Drawing retainer, and attending to retain Mr. M.	0	6	8
					Paid his fee and clerk	1	3	6
				9.	Close copy, joinder of issue settled by Mr. M. sent	0	2	0
					Copy to file	0	2	0
					Attending to file same	0	6	8
					Paid filing	0	5	0
					Copy to deliver	0	2	0
					Attending delivering same to the plaintiff's solicitors	0	5	0
					Booking papers to the country and messenger	0	1	8

£	s.	d.	1867.		£	s.	d.	Defendant's Bill of Costs between Party and Party.
			Apr. 9.	Drawing issue and copy to deliver	0	10	0	
				Close copy sent	0	5	0	
2	2	0		Attending to deliver issue to the plaintiff's solicitors				
				Attending Mr. M. and Mr. K., and receiving their instructions to see Mr. and Mrs. D. with the statement in order that they might put their signature to it, and attending at accordingly and seeing them, and they signed the statement	2	2	0	
0	12	0		Horse hire and expenses	0	12	0	
				Term fee	0	15	0	
<i>Easter Term.</i>								
0	6	8		Instructions for Mr. M. to move the Court as to mode of trial	0	6	8	
0	10	0	18.	Drawing case for motion as to mode of trial ..	0	10	0	
0	6	8		Attending filing case for motion as to mode of trial	0	6	8	
				Paid	0	10	0	
0	5	0		Notice thereof and service	0	5	0	
0	2	0		Close copy sent				
0	5	0	20.	Messrs. N. & Co. having delivered issue, perus- ing same	0	10	0	
0	5	0		Close copy sent	0	10	0	
				Perusing notice of motion by them as to mode of trial	0	2	0	
				Close copy sent	0	2	0	
				Messrs. N. & Co. having given notice that they should apply to have the cause tried by a special jury, attending Mr. M. and Mr. K., when they directed us to consent to special jury	0	13	4	
0	6	8	25.	Attending searching, when we found that the plaintiff's solicitors had lodged the papers for motion as well as ourselves	0	6	8	
0	6	8		Attending Mr. M. and Mr. K., conferring as to whether it would not be well to have the cause tried at when they instructed us to see counsel thereon	0	6	8	
0	6	8	28.	Attending Mr. M. by your direction to consult him as to the mode of trial, when he advised us to apply to have the cause tried at with a special jury, and it was arranged that we should make an affidavit showing the expense to be less if tried at than in and writing you	0	6	8	
				Instructions for affidavit in support of motion ..	0	6	8	
				Drawing same	0	6	0	
				Fair copy	0	2	0	
				Attending to be sworn	0	6	8	
				Paid	0	2	6	
			29.	Brief for counsel to move for cause to be tried at &c. by a special jury	0	6	8	
				Brief pleadings for counsel	0	10	0	
				Attending to file affidavit in support of mo- tion	0	3	4	
				Paid filing	0	2	6	

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1867.		£	s.	d.
	0	2	0	Apr. 29.	Copy affidavit for the other side	0	4	0
	0	2	0		Briefing affidavit for counsel	0	4	0
					Attending counsel with papers	0	6	8
					Paid his fee and clerk	1	3	6
	0	6	8		Brief for counsel to oppose motion to be made by the plaintiff	0	6	8
					Attending counsel with papers	0	6	8
					Paid his fee and clerk	1	3	6
	0	13	4	30.	Attending Court on motion when the applica- tion was to be repeated next Tuesday, the plaintiff's solicitors requiring time to answer affidavit	0	13	4
					Paid cab, with papers	0	2	0
	0	6	8	May 1.	Attending Messrs. N., on their calling upon us to say they should apply to have the cause tried in .. by a special jury, and asking for consent, and we informed them that we should press for the trial to be in the country, &c.	0	6	8
	0	6	8		Attending Mr. K., informing him of the above, and conferring thereon	0	6	8
	0	3	6		Writing to Mr. M., informing him of the above, and for his instructions	0	3	6
	0	2	0	8.	Perusing notice of motion served by Messrs. N., sent	0	2	0
	0	2	0		Close copy sent	0	2	0
	0	10	0		Drawing case for motion on re-hearing the application as to mode of trial	0	10	0
	0	6	8		Attending filing case for motion	0	6	8
					Paid	0	10	0
	0	5	0		Notice thereof, copy and service	0	5	0
	0	2	0		Close copy sent	0	2	0
	0	6	8	11.	Brief for counsel to repeat the motion as to mode of trial	0	6	8
	0	6	8		Attending counsel with brief	0	6	8
					Paid his fee and clerk	1	3	6
					Brief for counsel to oppose motion to be made by the plaintiffs	0	6	8
					Attending counsel with brief	0	6	8
					Paid his fee and clerk	1	3	6
				14.	Attending Court on motion, when the Court directed the cause to be tried in .. by a special jury, the plaintiff to pay the extra costs of trial in .. beyond those which would be incurred if trial took place at ..	0	13	4
					Paid cab, with papers	0	2	0
					Attending to draw up order as to mode of trial	0	6	8
					Paid Court fee	0	2	6
					Copy and service of order	0	5	0
	0	6	8	21.	Close copy order as to mode of trial sent ..	0	2	0
					Attending Mr. K. on the result of the motion, and conferring	0	6	8
	2	2	0		Journey to .. to see Mr. M. on the further proceedings, and taking instructions, &c. . .	2	2	0
	0	12	0		Horse hire and expenses	0	12	0
					Term fee	0	15	0

£	s.	d.	1867.	Trinity Term, 1867.	£	s.	d.	Defendant's Bill of Costs between Party and Party.
			May 30.	Perusing summons for leave to lodge the record	0	2	0	
				Copy sent	0	2	0	
				Attending order made by judge	0	6	8	
				Copy order sent	0	2	0	
				Perusing notice of trial	0	2	0	
				Close copy sent	0	2	0	
0	6	8	June 5.	Attending searching how the cause stood in the paper	0	6	8	
				Attending Messrs. N. & C., to request them to let us have the questions for the jury without delay, and they promised to do so.	0	3	6	
				10. Instructions for counsel to advise the defen- dants on evidence	1	1	0	
3	9	0		Drawing same and copy	4	10	0	
				Attending counsel with papers	0	6	8	
				Paid his fee and clerk	3	5	6	
				Numerous attendances on Mr. M. for case and opinion	0	6	8	
				17. Perusing opinion on evidence	0	4	0	
				Close copy sent	0	4	0	
				Attending Mr. M., conferring with him on the evidence, and taking further instructions	0	6	8	
				The like attendance on Mr. K.	0	6	8	
0	6	8		20. Attending Mr. K. on his informing us that Mrs. K. was getting rid of some of the effects of the testator, and receiving instruc- tions to write to Messrs. N. & Co. to know whether they would consent to an inventory being taken in the usual way	0	6	8	
0	6	8		Writing them, accordingly, and clerk's attend- ance with the latter, and they were to com- municate with their client	0	6	8	
0	6	8		Having received your instructions, attending Mr. M. upon the above, when he advised us that the proper course would be to apply for appointment of an administrator pen- dente lite, and writing you thereon	0	6	8	
				25. Not having received a reply to our letter to Messrs. N. & Co. of the 20th, writing to them for same	0	3	6	
				Perusing questions for the jury	0	4	0	
				27. Close copy questions for the jury sent	0	4	0	
				Copy letter from Messrs. N. & Co. sent	0	1	0	
				Attending Mr. K. on letter from Messrs. N., and advising and receiving instructions	0	6	8	
				29. Attending Mr. M. on Messrs. N.'s letter and receiving instructions	0	6	8	
0	10	0		Drawing instructions for counsel to settle the question on behalf of the defendants	0	10	0	
0	6	8		Attending counsel with papers	0	6	8	
1	3	6		Paid his fee and clerk	1	3	6	
				On receipt of your letter saying you did not quite understand Messrs. N.'s letter, but if they required a list of the documents handed to you by the late Mr. K. &c., and as to the				

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1867.	£	s.	d.
				June 29.			
				person you proposed to make the inventory, making a copy thereof and writing to Messrs. N. therewith and thereon	0	4	6
				July 2. Copy letter received from Messrs. N. sent ..	0	1	0
0	6	8		Attending Mr. K. on Messrs. N.'s refusal to make an inventory made and conferring and advising	0	6	8
0	6	8		4. Attending Mr. M. when he said he approved of the questions delivered by the other side and writing you thereon	0	6	8
				On receipt of your letter in reply to Messrs. N. & Co. therewith and thereon	0	6	8
2	2	0		9. Journey to with Mr. K. to see Mr. M. on Messrs. N.'s letter to them and conference thereon, and receiving instructions and ad- vising	2	2	0
0	12	0		Horse hire and expenses	0	12	0
				26. Copy letter received from Messrs. N. sent ..	0	1	0
				Attending Mr. K. and Mr. M. thereon, and con- ferring at length and receiving their instruc- tions	0	6	8
				Writing Messrs. N. in reply to their letter that you were acting only as trustees in the inter- est of the late Mr. K.'s infant nephew and that you did not feel to be in a position to make a proposition, but that you would be disposed to consider anything they might be advised to make	0	3	6
				Copy this letter sent	0	1	0
				30. Copy letter received from Messrs. N. sent ..	0	1	0
				Writing them acknowledging receipt of their letter, and that we were in communication with you	0	3	6
				Attending Mr. M. and Mr. K. on the letter received from Messrs. N. & Co. and taking instructions	0	13	4
				Aug. 3. Writing to Messrs. N. & C. that we were in- structed to arrange for an interview between them and ourselves, but that any proposal they might make must be submitted by us to you, and that if, necessary, we might here- after arrange for an interview in the country ..	0	8	0
				Copy this letter sent	0	1	0
				6. Attending Messrs. N. on their calling upon us by appointment, but they made no proposal, and they stated in the first place they wished you to state what property had come into your hands, and they wished to be assured that there was a bonâ fide disposi- tion on the part of the defendants to arrange terms, that they had been informed the parties you represented were very desirous that an arrangement be come to, and writing you fully thereon	0	13	4
				7. Copy letter from Messrs. N. & Co. sent ..	0	1	0
				Attending Mr. K. on Messrs. N.'s letter on the 6th, and conferring and receiving in- structions	0	6	8

£	s.	d.	1867.		£	s.	d.	Defendant's Bill of Costs between Party and Party.
0	6	8	Aug. 7.	The like attendance on Mr. M.	0	6	8	
			12.	Writing to Messrs. N. & C. that it would be inconvenient for you to come to town, but that if they would communicate any pro- posal to us it should be submitted to you ..	0	5	0	
0	6	8	Oct. 25.	Attending at the Principal Registry for and bespeaking office copy of the order for the cause to be tried by a special jury	0	6	8	
0	2	6		Paid for same	0	2	6	
0	2	0		Perusing same	0	2	0	
0	2	0		Close copy sent	0	2	0	
			28.	Attending at the Principal Registry for and bespeaking office copy order for the jury to be summoned	0	6	8	
				Paid for same	0	5	0	
				Afterwards attending in the Registry to get the order signed by the Judge, and after- wards for same	0	6	8	
0	2	0		Perusing same	0	2	0	
0	2	0		Close copy sent	0	2	0	
				Attending sheriff for appointment to nominate special jury	0	6	8	
				Paid the sheriff's fees	2	2	0	
				Copy rule for the sheriff	0	2	0	
				The like of order	0	2	0	
				Copy and service of appointment to nominate Term fee	0	5	0	
					0	15	0	
<i>Michaelmas Term, 1868.</i>								
0	13	4	Nov. 2.	Attending in the Principal Registry, searching how the cause stood and writing	0	13	4	
0	2	6		Paid for cause list and Court C.	0	2	6	
8	8	0		Instructions for brief	15	15	0	
				Drawing same, fos. 380	19	0	0	
				Two fair copies for counsel, fos. 797	26	11	4	
				Briefing questions for counsel	0	8	0	
				Two fair copies of plaintiff's script to accom- pany				
				The like of affidavits				
				Two fair copies of defendant's script, fos. ..				
				The like of affidavits				
			6.	Attending nominating the special jury	0	13	4	
				Copy writ, fos. 48	0	5	0	
				The like sent	0	5	0	
				Instructions to reduce the list	0	13	4	
			9.	Making a copy of a copy of a letter we had received from the Principal Registry in this matter appointing to see us for the purpose of appointing a day to try the cause	0	1	4	
			13.	Attending before the Judge at on his Lordship appointing the 7th December to try the same	0	13	4	
				Writing to the country to inform defendant's attorney the day appointed for the trial of the same	0	3	6	
			14.	Attending reducing the special jury	0	13	4	
				Copy list of, 24	0	2	6	
0	1	8		The like sent	0	2	6	

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R R

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1867.		£	s.	d.
	0	4	6	Nov. 14.	On receipt of a letter from Messrs. N. & C. requesting an appointment to see the defendant's attorney on this suit as they were about visiting .., copy sent ..	0	4	6
	0	3	6		Writing Messrs. N. & C. acknowledging receipt of the letter and that we had communicated its contents to the defendant's attorneys ..	0	3	6
	2	2	0		In consequence of Messrs. N. & C.'s letter, journey to .. to see Mr. M. thereon and taking his instructions ..	2	2	0
				16.	On receipt of another letter from Messrs. N. & C. upon this business, making a copy thereof and writing the defendants therewith and thereon ..	0	4	6
					Writing to Messrs. N. & C. acknowledging the receipt of the letter and that we had communicated the contents to the defendant's attorneys ..	0	3	6
	0	2	6		Paid carriage of brief and other papers to town ..	0	5	0
				19.	Having received another letter from Messrs. N. & C. with the reply stating the time the defendant's attorney would be at .. &c. ..	0	3	6
					Copy, Messrs. N. & C.'s letter sent ..	0	1	0
				26.	Drawing two subpoenas and præcipes and attending issuing the same ..	0	8	4
	0	1	0		Copy and service of subpoena on Mr. C. ..	0	6	0
	1	19	0		Paid him with subpoena ..	2	0	0
					Certificate of service ..	0	2	6
	0	1	0		Copy and service of subpoena on Mr. K. ..	0	6	0
	0	19	0		Paid him with subpoena ..	1	0	0
					Certificate of service ..	0	2	6
	0	1	0		Copy and service of subpoena on Mr. T. ..	0	6	0
	1	19	0		Paid him with subpoena ..	2	0	0
					Certificate of service ..	0	2	6
	0	1	0		Copy and service of subpoena on Mr. I. ..	0	6	0
	1	19	0		Paid him with subpoena ..	2	0	0
					Certificate of service ..	0	2	6
	0	1	0		Copy and service of subpoena on Mrs. C. ..	0	6	0
	1	19	0		Paid her with subpoena ..	2	0	0
					Certificate of service ..	0	2	6
	0	1	0		Copy and service of subpoena on Mrs. T. K. ..	0	6	0
	1	19	0		Paid her with subpoena ..	2	0	0
	0	4	6		Copy and service of subpoena on Mr. D. and mileage ..	0	13	0
	1	19	0		Paid him with subpoena ..	2	0	0
					Certificate of service ..	0	2	6
	0	4	6		Copy and service of subpoena on Mrs. D. and mileage ..	0	13	0
	1	19	0		Paid her with subpoena ..	2	0	0
					Certificate of service ..	0	2	6
	0	9	6		Copy and service of subpoena on Mr. M. ..	0	13	0
					Paid him with subpoena ..			
					Certificate of service ..	0	2	6
	0	2	6		Drawing notice to inspect and admit ..	0	10	0
	0	3	4		Copy for ..	0	3	4
	0	3	4		Close copy sent ..	0	3	4

£	s.	d.	1867.		£	s.	d.	Defendant's Bill of Costs between Party and Party.
0	2	6	Nov. 26.	Drawing notice to produce	0	10	0	
0	3	4		Copy for.. ..	0	3	4	
0	3	4		Close copy sent	0	3	4	
0	2	8		Two copies notice to produce to annex to writ	0	6	8	
0	2	8		The like of notice to admit	0	6	8	
0	2	6		Copy jury list for the sheriff	0	2	6	
				Attending Messrs. N. & C., obtaining their signature to the same	0	6	8	
				Attending the sheriff with same and instruct- ing to summon the special jury	0	6	8	
				Paid the sheriff's fees	4	14	0	
30.				Attending the sheriff for the panel	0	6	8	
				Perusing same and examining	0	2	0	
				Attending the Principal Registry lodging the same	0	2	6	
0	13	4	Dec. 4.	Attending at the Principal Registry and Court searching how the cause stood, and writing to the country as to the attendance of the witnesses, arranging for them not to be in town until they were actually required, in order to save expense	0	13	4	
				Affidavit of service of notice to inspect and	0	6	0	
				Copy notice to annex	0	3	4	
				Attending to be sworn	0	6	8	
				Paid oath	0	1	6	
5.				Attending Mr. D. with brief	0	13	4	
				Paid his fee and clerk	33	0	0	
				Attending Mr. M. with brief	0	13	4	
				Paid his fee and clerk	22	0	0	
				Attending each counsel to appoint consultation	0	6	8	
				Consultation fee, Mr. D.	2	9	6	
				The like, Mr. M.	1	3	6	
6.				Attending at searching how the cause stood, and there being a probability that the cause would be reached on the day appointed. Attending to transmit telegram to the defendants				
0	13	4		Attending to arrange for the attendance of the witness	0	13	4	
				Paid for telegram	0	2	0	
0	3	6		Having received telegram for the witnesses to be in readiness to be at on the morrow	0	3	6	
				Letter to Mr. C. to inform him thereof	0	2	0	
				The like, Mr. M.	0	2	0	
				The like, Mr. D.	0	2	0	
				The like, Mrs. D.	0	2	0	
0	18	0		The like, Mr. T.	0	2	0	
				The like, Mr. K.	0	2	0	
				The like, Mrs. K.	0	2	0	
				The like, Mr. C.	0	2	0	
				The like, Mr. I.	0	2	0	
0	13	4		Attending at again later in the day, and also attending counsel, when it was found that the cause would not be reached on the morrow, and attending to transmit telegram to countermand the attendance of the witnesses	0	13	4	

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1867.		£	s.	d.
				Dec. 6.	Paid for telegram	0	3	0
	0	3	6		One receipt of a telegram countermanning the attendance of the witnesses. Letter to Mr. C. thereon	0	3	6
					The like, Mr. M.	0	2	0
					The like, Mr. D.	0	2	0
					The like, Mrs. D.	0	2	0
					The like, Mr. T.	0	2	0
					The like, Mr. K.	0	2	0
					The like, Mrs. C.	0	2	0
	0	16	0		The like, Mrs. K.	0	2	0
					The like, Mrs. I.	0	2	0
					Perusing notice to produce	0	4	0
					Close copy sent	0	4	0
	0	6	8		Attending Mr. T., the plaintiff's solicitor, on his calling upon me upon the subject of the draft of a will made by the testator in 1853, and all day-books, books of account, and other documents in my possession relating to this cause, which he wished to have pro- duced	0	6	8
	0	2	0		Perusing notice of application to amend the pleas	0	4	0
	0	2	0		Close copy sent	0	4	0
	0	4	0		Perusing notice to produce	0	4	0
					Close copy	0	4	0
	0	4	0		Two brief copies of notice of application to amend the pleas for counsel	0	8	0
	0	4	0		Two copies notice to produce for trial	0	8	0
	0	6	8		Attending each counsel for the above papers	0	6	8
	0	6	8		Drawing instructions for Mr. M. in pursuance of notice of application to amend the pleas	0	6	8
	0	6	8		Attending Mr. M. with the papers	0	6	8
	2	4	6		Paid his fee and clerk	2	4	6
	3	3	0	9.	Self and clerk engaged this day in arranging the papers and books to be taken for pro- duction on this trial, in consequence of the notice to produce	3	3	0
	0	6	8		In order to save expense attending Court, and afterwards attending counsel, to know whe- ther we should have the witnesses in town on Wednesday, when they advised us not to have them in town, and writing you	0	13	4
					Drawing telegram to inform you of the above, and attending to transmit same	0	4	0
	0	7	8	10.	On receipt of telegram from agents that the witnesses would not be required to-morrow, attending each of them informing them thereof	1	1	0
					Attending consultation when it was deter- mined, under the advice of counsel, to em- ploy another expert, and they recommended Mr. D.	0	13	4
	0	1	0		Copy and service of subpoena on Mr. D.	0	6	0
	1	0	0		Paid him with subpoena	1	1	0
					Certificate of service	0	2	6
	0	13	4		Attending with the expert to inspect the signatures to the wills and codicils, &c.	0	13	4

£ s. d. 1867.				£ s. d.	Defendant's Bill of Costs between Party and Party.
2	2	0	Dec. 10.	Afterwards attending him taking his evidence, very long	2 2 0
2	2	0	11.	Attending at cause in the paper, but not reached	2 2 0
				Carriage of papers	0 3 0
1	8	8	12.	The like	2 2 0
				Carriage of papers	0 3 0
				The Judge having intimated that no other cause could be taken till the 18th instant, attending to transmit telegram to inform you of the above	0 4 0
				Paid	0 2 0
0	4	6		Attending to inform each of the witnesses of the above	1 1 0
0	13	4	16.	Attending Mr. D. on his calling upon us with his report, and perusing same	0 13 4
0	5	0		Making a copy for you	0 5 0
0	13	4	17.	On receiving letter from agents, with copy of Mr. D.'s report on the signatures to the wills propounded by plaintiff, perusing and considering same, and attending Mr. K., submitting same to him, and conferring thereon at length	0 13 4
				Attending at again searching how the cause stood and writing	0 6 8
				Drawing telegram to inform you of the above, and attending to transmit same	0 4 0
				Paid	0 2 0
2	2	0	18.	On receiving telegram from agents that this cause would not be reached to-day, journey to Attending Mr. M., informing him thereof, and submitting Mr. D.'s re- port to him, and conferring thereon	2 2 0
0	12	0		Horse hire and expenses	0 12 0
0	4	6		Informing the other witnesses of the above	1 1 0
1	8	8		Attending Court, cause in the paper, but not reached	2 2 0
				Paid carriage of papers	0 3 0
1	8	8	19.	The like	2 2 0
				Paid carriage of papers	0 3 0
				On receiving letter that there was no chance of this cause being reached till the 21st, attending Mr. K. informing him thereof	0 6 8
				The like attendance on Mr. M., and conferring thereon	0 6 8
			20.	Attending Court, when it was ordered that this cause was to stand over until next term	2 2 0
				Drawing telegram, and attending to transmit same to inform you of the above	0 4 0
				Paid for telegram	0 2 0
0	3	6		On receipt of telegram from agents that this cause would not be heard till the middle of January next. Writing letter to Mr. M., informing him thereof	0 3 6
				Writing letter to Mr. D., informing him thereof Attending the other witnesses, informing them thereof	0 3 6
0	2	8			0 13 4
1868.					
0	6	8	Jan. 26.	Attending again at the Principal Registry to ascertain when special juries would be taken next term, and writing	0 6 8

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1868.	Hilary Term, 1868.	£	s.	d.
				Jan. 6.	Term fee	0	15	0
				11.	Attending paying refresher fee to Mr. D. ..	0	6	8
					Paid his fee and clerk	2	4	6
					Attending paying refresher fee to Mr. M. ..	0	6	8
					Paid his fee and clerk	1	3	6
				15.	Two subpoenas ad test.			
				18.	Drawing supplemental brief for counsel ..	1	0	0
					Two fair copies for counsel	1	6	8
					Attending counsel therewith	0	6	8
					Having received notice from the Principal Registry to attend before the Judge for the cause to be appointed, perusing same ..	0	1	0
					Copy sent	0	1	0
0	6	8			Attending Mr. K. on the evidence to be given by the expert, &c.	0	6	8
				29.	Attending before the Judge at when the cause was appointed for 28th Feb.	0	13	4
0	6	8		30.	Attending Mr. K., informing him of the time appointed by the Judge for the trial of this cause, &c.	0	6	8
0	3	6			Writing letter to Mr. M., informing him thereof	0	3	6
0	6	8		Feb. 1.	Attending searching how the cause stood in the paper and writing you	0	6	8
0	1	0			Copy and service of subpoena on Mr. D. ..	0	6	0
1	0	0			Paid him with subpoena	1	1	0
0	13	4			Certificate of service	0	2	6
					Attending you, when after consideration it was thought desirable to have a view of the wills and codicils, and attending counsel thereon in consultation when they advised a view	0	13	4
0	1	0		15.	Attending Mr. C., serving him with subpoena, and arranging for his attendance at the trial	0	6	0
0	1	0			Paid him	0	1	0
					The like attendance on Mr. K., serving him with subpoena	0	6	0
					Paid him	0	1	0
0	1	0			Certificate of service	0	2	6
					The like attendance on Mr. T., serving him with subpoena	0	6	0
					Paid him	0	1	0
0	1	0			Certificate of service	0	2	6
					The like attendance on Mrs. I., serving her with subpoena	0	6	0
					Paid her	0	1	0
0	1	0			Certificate of service	0	2	6
					The like attendance on Mrs. C., serving her with subpoena	0	6	0
					Paid her	0	1	0
0	1	0			Certificate of service	0	2	6
					The like attendance on Mrs. K., serving her with subpoena	0	6	0
					Paid her	0	1	0
1	7	0			Certificate of service	0	2	6
					Journey to attending Mr. M. and con- ferring hereon, and afterwards attending			

£ s. d.	1868.		£ s. d.	Defendant's Bill of Costs between Party and Party.
	Feb. 15.	Mr. and Mrs. D., serving them with sub- pœna and arranging for their attendance at the trial	2 2 0	
1 18 0		Paid them with subpœna, 1 <i>l.</i> each	2 0 0	
0 12 0		Horse hire and expenses	0 12 0	
0 2 0		Certificate of service	0 5 0	
	22.	Attending the sheriff, directing him to re- summon the jury	0 6 8	
		Paid him	4 14 0	
		Attending for special jury panel	0 6 8	
		Attending at the Principal Registry with the same	0 6 8	
		Paid	0 2 6	
0 6 8		Attending Mr. D. to appoint view	0 6 8	
5 15 6		Paid his fee and clerk	5 15 6	
0 6 8		Attending Mr. M. to appoint view	0 6 8	
3 13 6		Paid his fee and clerk	3 13 6	
0 6 8		Attending each counsel to appoint consulta- tion	0 6 8	
2 9 6		Consultation fee, Mr. D.	2 9 6	
1 3 6		The like, Mr. M.	1 3 6	
0 4 0		Drawing telegram to inform the time for the view, and attending to transmit the same..	0 4 0	
0 6 8		Attending at the Principal Registry to arrange for the view, when we were informed the document had been removed to and they could not be seen on Monday, and attending counsel to put off the appoint- ment and writing you	0 6 8	
0 6 8	24.	On receiving letter from agents that the docu- ments had been removed from the Registry so that the view had been postponed. At- tending Mr. D. J. K., conferring hereon ..	0 6 8	
2 2 0		Journey to .. with Mr. D. J. K. Attending Mr. M., long consultation with him hereon and making the necessary arrange- ments for the witnesses' attendance at the trial	2 2 0	
0 12 0		Horse hire and expenses	0 12 0	
0 13 4	25.	Attending at the Registry and afterwards at arranging for the production of the wills on view with counsel	0 13 4	
0 6 8		Attending Mr. D., arranging for his attend- ance on the morrow at	0 6 8	
0 13 4	26.	Attending at .. and afterwards attending counsel, when we found that we could not have it again this day, and attending Mr. D. at his private residence to save the expense of his attendance at	0 13 4	
		Attending at .. when we found that the cause was nearly reached	0 6 8	
		Drawing telegram to inform thereof and at- tending to transmit the same	0 4 0	
		Paid	0 3 0	
0 5 0		On receipt of a telegram, making a copy thereof and writing to Mr. M. therewith ..	0 5 0	

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1863.		£	s.	d.
	0	6	8	Feb. 26.	Attending Mr. D. J. K., informing him thereof, and conferring and advising ..	0	6	8
	2	2	0	27.	Attending at cause not reached ..	2	2	0
	1	8	8	28.	Attending Court all day, when the Judge intimated that no other cause would be put into the paper on the morrow than Q—— v. M——, which had been part heard ..	2	2	0
					Drawing telegram and attending to transmit the same to you to prevent the attendance of the witnesses	0	4	0
	0	6	8		Paid for telegram	0	3	0
					Attending counsel, when he informed us that Mr. D. at the rising of the Court would apply to have this cause made a remanet to the sittings after Easter Term, and attending at to hear the result	0	6	8
					Paid cab for expedition	0	2	0
	0	3	6		Attending the witnesses and informing them of the above	0	13	4
	0	6	8		Writing to Mr. D., to inform him the cause would not be in the morrow's paper ..	0	3	6
					On receiving telegram from agents that the witnesses would not be required on Friday, attending Mr. D. K. K., informing him thereof	0	6	8
					Paid for telegram on arrival	0	1	0
	1	1	0		Writing to Mr. M., informing him thereof ..	0	3	6
					Attending at when the Court intimated that the cause would not be in the paper until Wednesday	1	1	0
	0	4	0		Drawing telegram to inform you of the above, and attending to transmit the same to you ..	0	4	0
	0	3	6		Paid for message	0	3	6
	0	13	4		Attending the witnesses on receipt of the above to inform them thereof	0	13	4
	0	3	6		Writing Mr. D. to inform him thereof ..	0	3	6
	0	6	8		On receiving letter from agents that the case was not yet reached, and that Mr. D. intended to make an application to have the trial postponed till after Easter Term as the counsel would be on circuit. Attending Mr. D. K., conferring thereon	0	6	8
	2	2	0		Journey to with Mr. D. J. K., consulting and conferring with Mr. M. upon this matter, when he instructed me to oppose Mr. D.'s application	2	2	0
	0	12	0		Horse hire and expenses	0	12	0
	0	6	8		On receiving letter from agents that the case would not be reached till next Wednesday. Attending Mr. K., informing him thereof ..	0	6	8
	0	1	0		Paid for message	0	1	0
	0	3	6	29.	Writing to Mr. M. informing him thereof ..	0	3	6
					The like to the other witnesses	0	13	4
	0	13	4	Mar. 2.	Attending Court, when the cause was ordered over until after next term	0	13	4
	0	2	6		Paid carriage of papers thereon	0	5	0
					Writing Mr. D., to inform him of the above ..	0	3	6
					The like to other witnesses			

£ s. d.	1868.		£ s. d.	Defendant's Bill of Costs between Party and Party.
0 6 8	Mar. 4.	On receiving letter from agents that Mr. D. had made his application while our counsel were out of Court, and the Judge had made the order attending Mr. D. K. K. therewith and thereon	0 6 8	
0 4 6		Making copy letter and writing to Mr. M. therewith	0 4 6	
0 6 8	11.	Attending Mr. M. and Mr. D. K. K., conferring upon this matter and explaining to Mr. M. the cause of the postponement	0 6 8	
		Term fee	0 15 0	
<i>Easter Term, 1868.</i>				
0 6 8	Apr. 15.	Attending searching how the cause stood in the paper	0 13 4	
0 6 8		Attending paying refresher fee to Mr. D. ..	0 6 8	
2 4 6		Paid his fee and clerk	2 4 6	
0 6 8		Attending paying refresher fee to Mr. M. ..	0 6 8	
1 3 6		Paid his fee and clerk	1 3 6	
0 6 8	16.	On receiving letter from agents that no probate causes would be taken during the present sittings, but that a fresh day would be fixed. Attending Mr. D. K. K., informing him thereof	0 6 8	
0 3 6		Writing to Mr. M., informing him thereof ..	0 3 6	
0 6 8	17.	Attending searching how the cause stood and writing you	0 6 8	
		Term fee	0 15 0	
<i>Trinity Term, 1868.</i>				
	May 22.	Attending searching how cause stood ..	0 6 8	
		Attending paying refresher fee to Mr. D. ..	0 6 8	
		Paid his fee and clerk	2 4 6	
		Attending paying refresher fee to Mr. M. ..	0 6 8	
		Paid his fee and clerk	1 3 6	
0 13 4		On receiving letter from agents that this cause was second in the paper, attending arranging with the witnesses	0 13 4	
0 6 8		Attending Mr. D. K. K., conferring hereon, and arranging for his attendance on the trial	0 6 8	
	June 5.	Perusing notice to appoint special juries ..	0 2 0	
		Close copy sent	0 2 0	
	8.	Attending Mr. M., conferring upon the business		
0 6 8	10.	Attending at .. before the Judge of the Court of Probate when the special juries were appointed	0 13 4	
	11.	Two snhpœnas duces		
		On receiving letter from agents that the Judge had appointed the 24th inst. for the trial of this cause, making copy letter and writing to Mr. M. thereon	0 4 0	
		Attending Mr. K. D. K., informing him thereof	0 6 8	
0 6 8	15.	Drawing instructions for the sheriff to re-summon the special jury	0 6 8	
		Attending the sheriff with same	0 6 8	

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1868.		£	s.	d.
				June 15.	Paid him	4	14	0
	0	1	0		Attending Mr. I. H. C., serving him with subpœna and arranging for his attendance at the trial	0	6	0
					Paid him with subpœna	0	1	0
					Certificate of service	0	2	6
	0	1	0		The like attendance on Mr. K., serving him with subpœna	0	6	0
					Paid him with subpœna	0	1	0
					Certificate of service	0	2	6
	0	1	0		The like attendance on Mr. T., serving him with subpœna	0	6	0
					Paid him with subpœna	0	1	0
					Certificate of service	0	2	6
					The like attendance on Mrs. I., serving her with subpœna	0	6	0
					Paid her with subpœna	0	1	0
	0	1	0		Attendance on Mrs. C., serving her with subpœna	0	6	0
					Paid her with subpœna	0	1	0
					Certificate of service	0	2	6
	0	1	0		The like attendance on Mrs. K., serving her with subpœna	0	6	0
					Paid her with subpœna	0	1	0
					Certificate of service	0	2	6
	1	3	0	17.	Journey to attending Mr. M., con- ferring hereon and attending Mr. and Mrs. D., serving them with subpœna and arrang- ing for their attendance at the trial ..	2	2	0
	0	12	0		Horse hire, &c.	0	12	0
					Certificate of service	0	2	6
	0	6	8	19.	Attending Mr. D., arranging for him to attend the view and copy and service of subpœna on him	0	6	8
	1	0	0		Paid him with subpœna	1	1	0
	0	6	8		Attending counsel to re-fix the time for the view, when Tuesday next at 1 o'clock at was arranged	0	6	8
					Writing to Mr. D., to inform him the time for the view	0	3	6
	0	13	4		Attending at bespeaking room for the view and	0	13	4
					Attending searching how the cause stood as directed and writing you	0	6	8
					Attending at the Sheriff's Office, Red Lion Square, for the jury panel	0	6	8
					Attending at the Principal Registry with same	0	6	8
					Paid	0	2	6
					Having received a letter from agents that cause most likely to be tried on the 24th ..			
	0	3	6	20.	Making copy letter and writing to Mr. E. M. thereon	0	4	6
					Writing to Mr. K. D. to be in readiness to go to	0	3	6
	0	6	8		Attending Mr. D. K. K., conferring hereon, and requesting him to be in readiness ..	0	6	8

£	s.	d.	1868.		£	s.	d.	Defendant's Bill of Costs between Party and Party.
0	6	8	June 22.	Attending Court, when we were informed that a common jury cause which stood last in the list would be taken first, and writing as to the witnesses, &c.	0	13	4	
0	6	8		Attending Mr. K. D. K. again this day, and arranging for the witnesses' departure to-morrow	0	6	8	
0	6	8		Attending Mr. I. H. C., arranging for his departure to to-morrow	0	6	8	
				Paid him				
1	10	0		Further for train fare	1	10	0	
0	6	8		The like attendance on Mr. C. T., and arranging with him	0	6	8	
1	10	0		Paid him further for train fare	1	10	0	
0	6	8		The like attendance on Mrs. I., and arranging with her	0	6	8	
1	10	0		Paid her further for train fare	1	10	0	
0	6	8		The like attendance on Mrs. C., and arranging with her	0	6	8	
1	10	0		Paid her further for train fare	1	10	0	
0	6	8		The like attendance on Mrs. S. K., and arranging with her	0	6	8	
1	10	0		Paid her further for train fare	1	10	0	
3	3	0		In consequence of the plaintiffs' notice to produce, &c., self and clerk engaged the whole day in perusing and looking into the documentary evidence to produce at the trial . .	3	3	0	
1	1	0		23. Attending view at	1	1	0	
0	13	0		Paid cab, with papers	0	3	6	
0	13	0		Attending bespeaking room for another view on the morrow, and paid	0	13	0	
0	3	6		Letter arranging for D. to attend the view . .	0	3	6	
				The like, attending transmitting telegram to country that there was a short common jury cause to be tried before this, and then this would be tried, and for witnesses to be present	0	4	0	
				Paid	0	2	0	
0	13	4		Attending consultation with counsel, conferring upon the evidence, and papers required in this case	0	13	4	
1	8	8		Attending Court all day, case in the paper, but not reached	2	2	0	
				Paid cab, with papers	0	2	0	
0	6	8		Attending paying refresher fee to Mr. D. . .	0	6	8	
11	0	0		Paid his fee and clerk	11	0	0	
0	6	8		Attending paying refresher fee to Mr. M. . .	0	6	8	
5	10	0		Paid his fee and clerk	5	10	0	
1	8	8		25. Attending Court all day, cause in the paper, but not reached	2	2	0	
				Paid cab, with papers	0	2	0	
1	1	0		26. Attending Court, case in the paper, and part heard	3	3	0	
				Paid cab, with papers	0	2	0	
0	10	6		Clerk's attendance, also, in consequence of number of witnesses	1	1	0	
				Attending paying refresher fee to Mr. D. . .	0	13	4	
				Paid his fee and clerk	16	10	0	
				Attending paying refresher fee to Mr. M. . .	0	6	8	

Defendant's Bill of Costs between Party and Party.	£	s.	d.	1863.		£	s.	d.
				June 26.	Paid his fee and clerk	11	0	0
	1	1	0	27.	Attending at, cause in the paper, and further part heard	3	3	0
					Paid carriage of papers	0	2	0
	0	10	6		Clerk's attendance	1	1	0
					Attending paying refresher fee to Mr. D. .. .	0	13	4
					Paid his fee and clerk	16	10	0
					Attending paying refresher fee to Mr. M. .. .	0	6	8
					Paid his fee and clerk	11	0	0
					Attending each counsel to appoint further consultation	0	6	8
					Consultation fee, Mr. D.	2	9	6
					The like, Mr. M.	1	3	6
				30.	Attending consultation	0	13	4
	1	1	0	July 1.	Attending Court all day, canse further partly heard, and adjourned till the next day .. .	3	3	0
					Paid cab, with papers	0	2	0
	0	10	6		Clerk's attendance	1	1	0
	0	13	4		Attending paying refresher fee to Mr. D. .. .	0	13	4
	11	0	0		Paid his fee and clerk	11	0	0
					Attending paying refresher fee to Mr. M. .. .	0	6	8
					Paid his fee and clerk	5	10	0
	1	1	0	2.	Attending Court all day, when the trial pro- ceeded with, and adjourned until the next day	3	3	0
					Paid carriage of papers	0	2	0
	0	10	6		Clerk's attendance	1	1	0
	1	1	0	3.	Attending at when the trial concluded, and verdict given for the defendant on all the issues, and the plaintiff was condemned in costs	3	3	0
					Paid for special jury	12	12	0
					Paid Court fees	2	12	6
				12.	Having received notice of motion for a new trial, perusing same	0	2	0
					Copy and service	0	2	0
	1	8	8	14.	Attending Court, when motion made for a new trial, and refused	2	2	0
					Paid cab, with papers	0	2	0
	18	18	0		Attending paying the following witnesses— paid Mr. T., solicitor, nine days, three guineas a-day	28	7	0
	2	12	0		Travelling expenses	4	12	0
	11	11	0		Mr. D., expert	19	19	0
	12	11	0		D. M., two guineas a-day, eleven days .. .	22	0	0
	2	12	0		Travelling expenses	4	12	0
	9	9	0		Mr. C., nine days	18	18	0
	1	18	0		Travelling expenses	3	18	0
	4	3	0		Mr. D., eleven days, 15s. a-day	8	5	0
	1	18	0		Travelling expenses	3	8	0
	4	3	0		Mrs. D., eleven days, 15s. a-day	8	5	0
	1	18	0		Travelling expenses	3	8	0
	3	6	0		Mr. T., eleven days, 1 guinea a-day .. .	11	11	0
	1	18	0		Travelling expenses	3	8	0
	4	3	0		Mrs. I., eleven days	8	5	0
	1	18	0		Travelling expenses	3	8	0
	4	3	0		Mrs. C., eleven days	8	5	0
	1	18	0		Travelling expenses	3	8	0

£	s.	d.	1868.		£	s.	d.	Defendant's Bill of Costs between Party and Party.
4	3	0	July 14.	Mrs. K., eleven days	8	5	0	
1	18	0		Travelling expenses	3	8	0	
5	10	0		Mr. K., eleven days, 10s. a-day	11	11	0	
1	18	0		Travelling expenses	3	18	0	
				Attending at the Principal Registry for Court minutes	0	6	8	
				Attending, &c.	0	6	8	
				Drawing bill of costs	10	0	0	
					3	6	8	
				Fair copies	0	6	8	
				Attending for appointment to tax	0	6	8	
				Copy and service of	0	5	0	
				Attending at the Principal Registry, paying the hearing fees	0	6	8	
				Paid	3	10	0	
				Attending taxing costs	5	5	0	
				Paid taxing fees				
				Term fee	0	15	0	

PLAINTIFF'S BILL OF COSTS,

AS TAXED BETWEEN SOLICITOR AND CLIENT.

In her Majesty's Court of Probate.

U. B. G. S——, plaintiff, v. S. S——, defendant.

In the goods of B. S——, deceased.

Hilary Term, 1864.

£ s. d. 1864.

			Attending at Doctors' Commons searching for and procuring copy. Caveat lodged by Messrs. N. & M. on behalf of defendant ..	0	6	8
0	10	0	Instructions for warning	0	6	8
			Drawing and engrossing same	0	10	0
0	6	8	Paid stamp	0	2	6
			Attending for and obtaining Registrar's sig- nature thereto	0	6	8
0	1	6	Copy and service	0	7	6
0	6	8	Attending entering caveat as against defend- ant and others	0	6	8
0	1	0	Stamp on same	0	1	0
0	1	0	Notice thereof to District Registrar	0	1	0
0	2	6	Paid stamp for notice to be served by post ..	0	2	6
0	6	8	Attending Mr. H. G. at, one of the late solicitors to the plaintiff, for and ob- taining draft and fair copy of will prepared by him for the late Mrs. S., same having to be filed as script	0	13	4
			Fair copy fac-simile will and codicil received from and examining same with clerk for proof, folios 11	0	5	6

Plaintiff's Bill of Costs between Solicitor and Client.	£	s.	d.	1864.		£	s.	d.
				14.	Attending at Registry, searching for and taking minute of entry of appearance by defendant	0	6	8
					Instructions for affidavit of script	0	6	8
					Drawing same and engrossing to file, folios 5 ..	0	6	8
					Making fac-simile copies of scripts B. C. D. E. F. and G., the originals having to be filed, 334 folios	5	11	4
0	1	4			Fair copy, warning to caveat to accompany, 4 folios	0	1	4
0	3	4			The like of copy will and codicil of 1st October, 1863, folios 11	0	3	4
0	1	0			The like of alleged revocation of 23rd February, 1864, 3 folios	0	1	0
1	3	6			Fee to counsel to peruse and settle affidavit of scripts	1	3	6
0	3	4			Attending him	0	3	4
0	9	4			Drawing instructions by way of case on several points in connection with the suit as to the best mode of procedure, and having reference to the peculiar facts of the case ..	0	13	4
					Fair copy thereof	0	6	8
					Fee to Mr. N. therewith and clerk	2	4	6
					Attending him	0	6	8
0	3	4			Attending Mr. N. with all the drafts and copies of wills, and as requested with a view to his finally settling affidavit of scripts	0	3	4
0	1	8		21.	Engrossing affidavit of scripts as amended ..	0	1	8
					Attending plaintiff, reading over same, and to be sworn	0	6	8
					Paid oath	0	1	6
					Preparing exhibits	0	7	0
					Paid fees thereon	0	7	0
0	4	2			Paid filing affidavit	0	6	8
0	6	8			Attending clerk of the papers when he required fac-simile copies showing the pencil marks in red ink, in addition to the original documents	0	6	8
0	6	8		22.	Attending counsel thereon, and subsequently the clerk of the papers, as to his requirements, that copies of all the documents should be supplied in which pencil appeared to be shown in red ink, for perpetuation in addition to the scripts then filed, and ultimately he reduced his requirements to copies of the particular sheets only	0	6	8
0	6	8			Attending searching for affidavit of scripts filed by defendant	0	6	8
				23.	Having received notice of defendant's having filed affidavit of scripts, attending inspecting same, and the scripts annexed, and making memoranda	0	6	8
0	1	8		Apr. 2.	Drawing summons, as advised by counsel, to show cause why defendant should not, within eight days, set forth his interest as entitling him to oppose the grant of probate of the will and codicil of 1st October, 1863 ..	0	5	0
					Attending the Registrar to get same signed ..	0	6	8
					Paid stamp	0	2	6

£	s.	d.	1864.		£	s.	d.	Plaintiff's Bill of Costs between Solicitor and Client.
0	1	0	Apr. 4.	Fac-similes of copies of portions of scripts as required by the clerk of the papers for perpetuation, folios 121.. ..	2	1	4	
				Attending at Registry with same	0	6	8	
				Paid examiner's fees thereon	2	3	6	
				Paid filing	0	4	0	
0	4	0		Notice of having filed affidavit of scripts and copy	0	4	0	
1	2	0		Copy affidavit of scripts and exhibits for defendant's solicitors, together 66 folios ..	1	2	0	
0	1	8		Attending them with same	0	6	8	
				Term fee.. ..	0	15	0	

Easter Term, 1864.

			19.	Attending summons at when in consequence of the great number same adjourned	0	6	8	
				Attending, bespeaking affidavit of defendant's script	0	6	8	
			26.	Attending adjourned summons, when in consequence of Sir James Plaisted Wilde being sworn in a Privy Counsellor this day at Osborne, all the summonses were adjourned till Friday	0	6	8	
			29.	Attending adjourned summons when order made	0	6	8	
			May 3.	Attending Registrar for and obtaining order..	0	6	8	
				Paid stamp	0	2	6	
				Copy and service	0	5	0	
				Paid for office copy of defendant's	0	7	0	
				Affidavit and scripts, folios 14	0	6	4	
0	1	8		Perusing and abstracting same	0	6	4	
				Attending Mr. M. on compromise, when he stated that the Revd. Mr. I. would insist on the deed poll of 1862 being set aside or rectified, and that Mr. S. senr., was alleging that he had intended to reserve to himself a power of revocation	0	6	8	
			12.	Attending at Registry for and obtaining copy amended appearance.. ..	0	6	8	
0	3	4		Perusing and abstracting	0	3	4	
0	2	0		Close copy	0	2	0	
0	1	8	18.	Drawing summons for defendant to propound his interest	0	5	0	
				Attending the Registrar getting same signed ..	0	6	8	
				Paid stamp	0	2	6	
				Copy and service	0	5	0	
				Term fee.. ..	0	15	0	

Trinity Term, 1864.

			26.	Attending summons before Judge when order made	0	6	8	
				Attending Registrar for order.. ..	0	6	8	
				Paid stamp	0	2	6	
				Copy and service	0	5	0	
June 3.				Perusing and abstracting declaration, folios 4 ..	0	1	4	
				Instructions for pleas and demurrer	0	6	8	
				Drawing same	1	0	0	
				Copy declaration to accompany	0	1	4	

Plaintiff's Bill of Costs between Solicitor and Client.	£	s.	d.	1864.	£	s.	d.
				June 3. Fee to Mr. N. to peruse and settle pleas and demurrer and clerk	1	3	6
				Attending him	0	6	8
0	1	0		{ Engrossing pleas and demurrer and copy to file	0	2	0
				{ The like to deliver	0	1	0
				Attending filing plea and demurrer	0	6	8
0	3	6		Paid stamp	0	5	0
0	6	8		24. Writing plaintiff as to this suit	0	3	6
				27. Attending plaintiff as to this matter and con- ferring thereon, and receiving his instruc- tions to issue summons, calling on defendant to deliver issue	0	6	8
0	1	8		29. Drawing summons accordingly	0	5	0
				Attending the Registrar to get same signed	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
				July 5. Attending summons when Judge made order for the pleadings to be amended in form by being turned into an act on petition, and that proof should be filed within eight days thereafter	0	6	8
				Attending Registrar for order	0	6	8
				Paid stamp	0	2	6
0	6	8		Copy and service	0	5	0
				9, 11, and 12. Attending defendant's solicitors on these days on their not having complied with terms of order; they ultimately promised to do so forthwith	0	13	4
0	3	4		13. Having received act on petition, perusing same Attending appointing conference with Mr. N. thereon	0	3	4
				Fee to him and clerk	1	6	0
0	6	8		Copy act on petition for him	0	3	4
				Attending conference	0	13	4
0	13	4		{ Drawing notice of motion to discharge or vary act on petition	0	6	8
				{ Copy for proof	0	6	8
				Copy and service	0	5	0
				Drawing motion paper	0	10	0
				Two copies	0	4	8
				Attending clerk of the papers, lodging same	0	6	8
				Paid stamp	0	10	0
0	8	8		25. Brief pleadings	0	2	0
				Drawing observations and copy	0	10	0
				Fee to Mr. N. therewith and clerk	3	5	6
0	5	0		Attending him	0	6	8
				Writing plaintiff in reply	0	5	0
				26. Attending Court when motion argued and order made that act on petition should stand, defendant paying the costs previously occa- sioned, and the Judge intimated that as the pleadings now stood, there was a sufficient possibility of interest shown in the defendant to oppose the grant	0	13	4
				Attending Registrar for order	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
				Term fee	0	15	0

Easter Term, 1865.

£	s.	d.	1865.		£	s.	d.
				Drawing costs and copy for taxation, folios 16	0	10	0
				Fair copy thereof for defendant's solicitors ..	0	3	4
0	2	6		Attending Registrar for appointment to tax ..	0	6	8
				Paid stamp	0	2	6
				Notice thereof to defendant's solicitors, copy			
				and service	0	5	0
				Paid filing bill	0	2	6
0	6	8		Attending at Registry filing same	0	6	8
				Attending taxing	0	13	4
				Paid stamp on taxation	0	5	0
				Attending defendant's attorneys agreeing the			
				amount	0	6	8
0	15	0		Term fee.. .. .	0	15	0

Mr. X. O. G.'s charges on change of solicitors.

0	6	8	Apr. 20.	The plaintiff in person having taken out summons for liberty to conduct cause, attending return at when order made without prejudice to the taxation and payment of costs, under order of July last, and without prejudice to Mr. G.'s lien on papers and funds to be recovered	0	13	4
				Attending Mr. S. on his calling in making a proposition and declining same ..			
0	3	6	27.	Writing Mr. S. in reply to letter received, that my opinion was unchanged, and my determination unaltered	0	3	6
0	6	8	May 9.	Attending summons to vary order when same dismissed with costs	0	13	4

1866.

0	5	8	Nov. 20.	Attending a gentleman from Mr. X. on his serving summons to show cause why the proceedings should not be prosecuted by Mr. X. instead of plaintiff in person, and conferring with him at his request as to my costs	0	6	8
0	6	8	26.	Attending Mr. X. on his calling, conferring hereon and giving him information, and arranged to attend summons to-morrow ..	0	6	8
0	6	8	27.	Attending summons by plaintiff in person to appoint Mr. X.—same adjourned for a week for the consideration of the Judge upon the question of payment of my costs	0	13	4
0	6	8	30.	Attending at Bankruptcy Court searching for, and obtained date of discharge	0	6	8
0	1	0		Paid	0	1	0
0	6	8	Dec. 4.	Attending adjourned summons at when order made	0	13	4
			8.	Attending Mr. X. on his handing me copy order, and he said he should write with a list of papers he required in a day or two ..			

1867.

0	6	8	Feb. 20.	Having received letter applying for papers, with a list required, looking up papers and arranging same	0	13	4
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APPENDIX IV.—EXAMPLES OF BILLS OF COSTS.

£	s.	d.	1867.		£	s.	d.
0	3	4	Feb. 20.	Drawing list thereof, and form of undertaking and receipt pursuant to order, and fair copy	0	13	4
0	3	6		Writing Mr. X. in reply to his letter, and with list, &c. thereon	0	3	6
0	6	8	23.	Attending Mr. X. on his calling at for papers, and offered him the papers in the cause on his signing receipt, but he required all the papers in the list he had supplied, and I declined to give up the same ..	0	6	8
0	3	6	28.	Writing Mr. X. in reply, that in my opinion what I had proposed to do complied with the order of the judge	0	3	6
			Mar. 2.	Attending Mr. X. on his serving summons for delivery of papers			
0	3	4		Copy list made out by Mr. X. for the Judge..	0	3	4
0	13	4	5.	Attending summons at when order made to deliver in four days papers, and Registrar to decide as to any others not delivered	0	13	4
0	3	6	12.	Writing Mr. X. that he might have papers contained in my list at any time in exchange for receipt and undertaking, and that if he considered he was entitled to any others I would attend the Registrar on receiving an appointment for that purpose	0	3	6
			15.	Notice of appointment before Registrar for to-morrow at half-past 1, received			
0	6	8	16.	Attending Registrar at Doctors' Commons, when lists gone through and directions given	0	13	4
0	3	6	18.	Writing Mr. X. to supply list of papers he considered the Registrar had settled ..	0	3	6
0	13	4		Drawing fresh list and copy to keep, and copy for Mr. X.	0	13	4
0	3	6	Apr. 1.	Writing Messrs. X. in reply to letter received, and appointing Wednesday at 12 to hand over papers	0	3	6
				Attending Mr. X.'s clerk subsequently on his calling in apprising him thereof			
			1.	Drawing undertaking and copy	0	6	8
0	6	8	3.	Attending Mr. X. on his calling, examining list and copies, and handing papers in exchange for receipt and undertaking, and answering his inquiries respecting Mr. X. ..	0	13	4
1	2	0	1866.	Attending plaintiff as to proceeding with this cause on his behalf, perusing various documents, discussing matter very fully with him and conferring thereon, when it was determined we should submit a case to Mr. N., and in the event of his opinion being favourable we would do so, engaged several hours	2	2	0
0	1	8	Nov. 17.	Drawing summons to show cause why Mr. K S. M. X. should not be appointed the solicitor of the plaintiff	0	5	0
				Attending the Registrar to get same signed ..	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0

£ s. d.	1866.	£ s. d.
	Nov. 17. Attending summons, when at request of Mr. G. same adjourned to the 4th December ..	0 6 8
	Dec. 1. Attending adjourned summons, order made, and also for Mr. G. to hand over to Mr. X. all the papers necessary for the conduct of the cause, Mr. X. undertaking to re-deliver them within ten days after the conclusion of the cause, and also to use all legitimate means to obtain the costs from the defendants, which he was ordered to pay, and on the receipt of same to hand over to Mr. G. the amount due to him for costs herein ..	0 6 8
	Attending Registrar for order	0 6 8
	Paid stamp	0 2 6
	Copy and service	0 5 0
0 6 8	Attending plaintiff, informing him result of application, and conferring as to course of proceeding	0 6 8

Michaelmas Term, 1866.

0 6 8	Long conference with counsel, Mr. N., on the point whether having regard to the circumstances of the case, and to the observations dropped by Sir K. Q. X. on the 26th July, 1864, when the motion was made to the Court herein on behalf of the plaintiff that the defendant's act on petition should be rejected or reformed as the Court might direct, but which he declined to order, but directed that the defendant should pay the plaintiff's costs occasioned by his the defendant setting forth his interest as in such act on petition set out, namely, that the defendant's interest as therein expressed might possibly give him a locus standi, it would be prudent or desirable further to litigate the defendant's interests, and when, after lengthy and mature consideration, Mr. N. advised the defendant should be served with notice that the plaintiff would not contest the point further, and proceed at once to declare	0 13 4
	Paid Mr. N. conference fee and clerk ..	1 6 0
0 3 4	Attending to pay same	0 6 8
	Instructions for declaration	0 6 8
	Drawing and engrossing same	1 0 0
	Fee to Mr. N. to peruse and settle same ..	1 3 6
0 3 4	Attending him	0 6 8
	Drawing and fair copy notice that plaintiff admitted defendant's interest, and would no longer contest same, copy and service ..	0 5 0
	Mr. N. having advised that inasmuch as more than a year had elapsed since proceedings had been had in this cause, that a summons should be taken out, supported by affidavit, for leave to serve and file declaration, instructions for affidavit in support	0 6 8

APPENDIX IV.—EXAMPLES OF BILLS OF COSTS.

£	s.	d.	1866.	£	s.	d.
			Dec. 1.			
			Drawing same, folios 8	0	8	0
0	6	8	Attending plaintiff reading over and settling same	0	6	8
			Ingrossing affidavit	0	2	8
			Attending plaintiff to be sworn	0	6	8
			Paid oath	0	1	6
0	6	8	Attending at the Registry to file same	0	6	8
			Paid stamp	0	2	6
0	1	8	Drawing summons for leave to file and deliver declaration	0	5	0
			Attending the Registrar to get same signed	0	6	8
			Paid stamp	0	2	6
			Copy and service	0	5	0
			Copy affidavit for defendant's solicitors	0	2	8
			11. Attending summons, order made	0	6	8
			Attending Registrar for order	0	6	8
			Paid stamp	0	2	6
			Copy order and service	0	5	0
			22. Retainer to Mr. D., Q.C., and clerk	1	3	6
0	3	4	Attending him	0	6	8
			Copy declaration to file	0	2	0
			Attending at the Registry filing declaration	0	6	8
			Paid stamp	0	5	0
			29. Having been served with summons for a month's time to plead, perusing and abstracting same, folios 3	0	1	0
			Attending summons, order made	0	6	8
			Perusing and abstracting order	0	1	0
			1867.			
			Jan. 4.			
			Having been served with defendant's pleas, and a declaration setting forth a subsequent revocation of the testatrix in the pleadings named, perusing and abstracting same, together 19 folios	0	6	4
0	13	4	The case being excessively special, there being no less than four wills made by the testatrix within a short time of her death, three of which were made out by the testatrix's relatives under most peculiar circumstances, and counsel having advised that he should be fully and minutely instructed as to every particular in order to settle pleas and state of facts, instructions for case accordingly	0	13	4
6	3	0	Drawing same, 123 folios	6	3	0
2	1	0	Fair copy for counsel	2	1	0
5	10	0	Fee to Mr. H. therewith and clerk	5	10	0
0	13	4	Attending him paying same	0	13	4
			Term fee	0	15	0
			Hilary Term, 1867.			
0	1	8	Jan. 12.			
			Drawing summons for a week's time to plead to defendant's declaration	0	5	0
			Attending the Registrar to get same signed	0	6	8
			Paid stamp	0	2	6
			Copy and service	0	5	0
			Attending summons, order made	0	6	8
			Attending Registrar, order made	0	6	8
0	2	6	Paid stamp	0	5	0

£	s.	d.	1867.		£	s.	d.
			Jan. 12.	Copy and service	0	5	0
				Instructions for replication	0	6	8
				Drawing and engrossing same	1	0	0
				Fee to Mr. N. to settle same and clerk ..	1	3	6
				Attending him	0	3	4
				Fair copy to file	0	1	0
				Attending at the Registry filing same ..	0	6	8
				Paid stamp	0	5	0
				Attending delivering replication	0	5	0
				Instructions for pleas to defendant's declaration	0	6	8
				Drawing same and fair copy	1	0	0
				Fee to Mr. N. to settle same	1	3	6
				Attending him	0	3	4
0	6	8		Instructions for particulars of plaintiff's case under 4th plea	0	6	8
0	6	8		Drawing and engrossing same, 12 folios ..	1	2	8
				Fee to Mr. H. to settle	1	3	6
			18.	Attending him	0	3	4
0	1	8		Drawing summons for further time to plead to defendant's declaration	0	5	0
				Attending the Registrar to get same signed ..	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
			22.	Attending summons, order made	0	6	8
				Attending Registrar for order	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
0	6	8		Mr. H.'s opinion being very long and special, upwards of two brief sheets, and several points requiring careful consideration, attending him appointing conference ..	0	6	8
1	6	0		Conference fee to Mr. H. and clerk	1	6	0
0	13	4		Attending conference, engaged very long time ..	0	13	4
0	1	8		26. Drawing summons for further time to plead to defendant's declaration	0	5	0
				Attending the Registrar to get same signed ..	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
			29.	Attending summons, order made	0	6	8
				Attending Registrar for order	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
0	6	8		Having much doubt whether it would be advisable to place on the record a plea of fraud, as advised by Mr. H., attending Mr. N. with fair copy pleas and state of facts as settled by Mr. H. as well as case, with instructions to advise and settle same finally ..	0	6	8
2	4	6		Fee to Mr. N. to settle same and clerk ..	2	4	6
0	6	8		Attending him	0	6	8
0	1	8	Feb. 2.	Drawing summons for further time to plead to defendant's declaration	0	5	0
				Attending the Registrar to get same signed ..	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
			5.	Attending summons, order made	0	6	8
				Attending Registrar for order	0	6	8
				Paid stamp	0	2	6

£	s.	d.	1867.		£	s.	d.
			Feb. 5.	Copy and service	0	5	0
0	6	8		Having received pleas and state of facts as settled by Mr. N., and the plea of fraud having been struck out for the reason suggested, attending Mr. H. thereon, when he retained his opinion for the reasons stated, and the point as to the evidence we might be excluded from giving	0	6	8
0	6	8		Attending Mr. N. appointing conference thereon	0	6	8
1	6	0		Conference fee to him and clerk	1	6	0
0	13	4		Attending conference, when, after long discussion, it was determined that plea of fraud should be withdrawn, and that a citation should issue	0	13	4
				Copy pleas to defendant's declaration as finally settled, folios 12	0	4	0
				Attending at the Registry filing pleas	0	6	8
				Paid stamp	0	5	0
				Copy statement of facts to file	0	4	0
0	6	8		Attending at the Registry filing same	0	6	8
				Paid stamp	0	5	0
0	1	8		Attending delivering pleas and statement	0	6	8
				Attending searching for will of U. S. deceased, the lawful father and next-of-kin to the testatrix in the pleadings named, and as advised by counsel, for the purpose of inserting his executor or administrator in citation, but unable to find either will or letters of administration	0	6	8
				Paid stamp on search	0	1	0
			21.	Having been served with replication perusing and abstracting same, 6 folios	0	2	0
				Drawing the issue and fair copy for delivery, 60 folios	2	0	0
0	1	8		Attending delivering same	0	6	8
0	1	8		Drawing summons for Mr. X. O. G. to forthwith deliver to us all the papers which had been prepared for or originated in this suit and properly connected therewith, and which were necessary for the conduct of the suit	0	5	0
				Attending the Registrar to get same signed	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
0	1	6	Mar. 1.	Letter to the defendant's solicitors requesting to be informed whether they would accept service of citation on behalf of Mr. S., Mr. J., Colonel S., Captain S. and Mr. M., to save expense of advertisement	0	5	0
0	3	4	4.	Attending defendant's solicitors, being without any answer to our letter, but they had received no instructions	0	3	4
			5.	Attending at the last known residence of the late Mr. U. S., when we saw the landlord, who knew nothing of the parties, he having lately come into possession, nor would he give us any information as to the whereabouts of the landlord of the house when Mr. S. lodged at	0	6	8

£ s. d. 1867.

£ s. d.

Mar. 5. Afterward attending at making inquiries of Mr. B. S., a nephew of the late Mr. U. S., for the address of his widow, when he informed us that at the time of his decease Mr. S. was lodging in and from which place he was buried, but he could give us no further information as to the other members of his family we required	0	6	8
Attending at and saw the landlady of the house where Mr. and Mrs. S. lodged, and she stated that she believed Mrs. S. was then living at and that Captain S. went to live at in same street, but she did not know whether she was still there or not ..	0	6	8
Attending at saw the landlady, she could give us no information as to Captain S., as he had left	0	6	8
Attending at when we found that Mrs. S. resided there	0	6	8
Cab hire	0	4	0
Attending summons order made for Mr. G. to hand over the papers within four days, and if the plaintiff was not satisfied with the compliance of the said Mr. G. under the order, then that both parties attend before one of the Registrars of this Court for him to decide the matter as to the delivery of the said papers between them	0	6	8
Attending Registrar for order	0	6	8
Paid stamp	0	2	6
Copy and service	0	5	0
6. Attending at the last known address of Mr. M., but found he had left, and they referred me to the of which they believed he was a member	0	6	8
Attending at accordingly, when his address was given us as engaged making these inquiries above two hours	0	6	8
Paid cab hire	0	4	6
Attending at the to ascertain the addresses of Colonel and Captain S. respectively, and on reference to their books, they found that these officers were on furlough, and consequently they could not give us their address, but referred us to the of which they stated Colonel S. was a member, and to Messrs. D. & H.	0	6	8
Attending at the found that Colonel S.'s letters were addressed there, and they referred us to where they believed the Colonel stayed when in town	0	6	8
Attending at accordingly, and found Colonel S. had left a few days previously, and was then staying with the Revd. Mr. I., at	0	6	8
Attending at Messrs. D. & H. for the address of Captain S., when, on reference to their books, they gave us his address as in the	0	6	8

£	s.	d.	1867.		£	s.	d.
			Mar. 6.	Paid cab hire	0	4	0
				Instructions for citation	0	6	8
				Drawing and engrossing same and præcipe ..	0	10	0
				Paid parchment	0	3	6
				Instructions for affidavit in support	0	6	8
				Drawing same and engrossing	0	9	4
				Attending plaintiff, reading over same, and to be sworn	0	6	8
				Paid oath	0	1	6
				Attending at Registry with præcipe, and procuring citation to be signed and sealed ..	0	6	8
				Paid stamp on the citation	0	5	0
0	6	8		Attending to file the affidavit	0	6	8
				Paid stamp thereon	0	2	6
0	5	10		Extracting citation	0	6	8
				Three copies of the citation for service, 11 folios each, together 33 folios	0	11	0
			12.	Having received letter from Messrs. N. & Co., defendant's solicitors, stating that they were instructed to accept service of the citation on behalf of Mrs. S. and Colonel and Captain S. and Mrs. M., but not for Mr. I., attending them, obtaining undertaking, leaving copy citation	0	6	8
3	0	4		13. Attending at serving Mrs. I. with citation, and leaving copy, 86 miles and railway fare and expenses	4	10	0
				Attending at Registry and searching whether appearance entered for any of the parties cited, and found same	0	6	8
				Stamps on searching	0	2	0
				Perusing and abstracting notice of appearance	0	1	0
				Drawing notice of intention to apply at the expiration of eight days to move the Court to direct the questions at issue to be tried by a common jury, copy and service	0	5	0
1	15	0		Drawing case and fair copy for Judge, folios 45	2	5	0
0	6	8		Instructions for the affidavit in support of motion	0	6	8
0	6	0		Drawing same, 6 folios	0	6	0
0	2	0		Engrossing same	0	2	0
0	6	8		Attending deponent, reading over same, and to be sworn	0	6	8
0	1	6		Paid oath	0	1	6
				Attending at Registry, filing the case for motion, and affidavit	0	6	8
				Paid stamps	0	10	0
1	6	8		Two copies case on motion for Messrs. N. & Co.	1	10	0
0	6	8		Instructions for brief on the case for motion ..	0	6	8
1	0	0		Drawing same and engrossing, 45 folios, being observations	1	15	0
				Copy citation and notice to accompany, together 12 folios	0	4	0
				Attending Mr. N. therewith	0	6	8
				Paid him his fee and clerk	2	4	6
				Not having been able to obtain all the papers and letters from Mr. G., attending the Registrar obtaining appointment	0	6	8

£	s.	d.	1867.	£	s.	d.
			Mar. 13. Service thereof	0	5	0
			16. Attending appointment before Registrar, when, after long discussion, he directed Mr. G. to deliver papers and letters to us, engaged two hours	0	13	4
0	8	0	Drawing and engrossing affidavit of service of citation	0	8	0
			Attending searching at Doctors' Commons, if Mrs. I. had appeared, and found that Messrs. D. & V. had appeared for both herself and husband	0	6	8
			Paid stamp on search	0	1	0
			Perusing and abstracting notice of appearance	0	1	0
			Attending surrogate to be sworn to affidavit of service of citation	0	6	8
			Paid oath and exhibit	0	2	6
0	6	8	Attending at Registry filing affidavit and ex- hibit	0	6	8
			Paid stamp thereon	0	5	0
0	3	0	Copy and service of notice of motion on Messrs. D. & Co.	0	3	0
			Copy case on motion for them	0	15	0
			19. Attending the Court, when after hearing coun- sel on both sides the Judge on the applica- tion of defendant ordered questions at issue to be heard before the Court itself and a special jury	0	13	4
			Attending at the Registry bespeaking office copy of the order	0	6	8
0	6	8	Attending afterwards for and obtaining same..	0	6	8
			Paid for order and collating	0	3	6
0	8	4	Copy order and service on defendant's soli- citors and Messrs. D. & Co.	0	8	4
0	6	8	Instructions to settle questions for the con- sideration of the jury	0	6	8
			Drawing same, folios 8.. .. .	0	8	0
			Fee to Mr. N. to settle and clerk	1	3	6
			Attending him	0	3	4
3	0	0	Drawing the record, 60 folios	3	0	0
			Engrossing same, including parchment ..	1	10	0
			Attending at the Registry lodging record ..	0	6	8
			Paid stamp on depositing same	1	0	0
			Notice thereof to defendant's solicitors ..	0	5	0
			The like to Messrs. D. & V.	0	5	0
			Letters to defendant's attorneys that not having received summons as promised to declare on further script we had been compelled to lodge record	0	3	6
			Apr. 4. Having been served with summons to show cause why defendant should not be at liberty to file a declaration propounding a copy of an alleged will of the testatrix B. S., dated the 11th February, 1864, being one of the scripts filed by the defendant on the 22nd March, 1864, perusing and abstract- ing same	0	1	0
			Term fee	0	15	0

				<i>Easter Term, 1867.</i>			
£	s.	d.			£	s.	d.
0	6	8	Apr. 15.	Having been served with notice that defendant would attend, summons for counsel, instructions for brief to oppose same	0	6	8
0	10	0		Drawing same and engrossing, 15 folios ..	1	0	0
0	2	4		Copy script of 11th February, 1864, and affidavit of defendant verifying scripta to accompany same, together folios 20	0	6	8
				Fee to Mr. N. therewith and clerk	2	4	6
				Attending him	0	6	8
			16.	Attending summons, order made, the Judge reserving the question of costs until case decided	0	6	8
				Perusing and abstracting copy order	0	1	0
				Having been served with declaration, propounding copy of alleged will of 11th February, 1864, perusing and abstracting same, folios 8	0	2	8
				Instructions for pleas	0	6	8
				Drawing pleas	1	0	0
				Fee to Mr. H. to settle and clerk	1	3	6
				Attending him	0	3	4
0	6	8		Instructions for particulars	0	6	8
0	8	0		Drawing same	1	0	0
				Fee to Mr. H. to settle and clerk	1	3	6
				Attending him	0	3	4
				Fair copy affidavit of defendant verifying scripta to accompany, folios 5	0	1	8
0	6	8	25.	Mr. H. having advised and drawn a plea of fraud attending him appointing conference thereon and on the pleas generally	0	6	8
1	6	0		Conference fee and clerk	1	6	0
0	13	4		Attending conference, when it was ultimately determined to retain the plea of fraud, and Mr. H. was to resettle the other pleas and particulars	0	13	4
0	1	8	May 2.	Drawing summons for time to plead to defendant's second declaration	0	5	0
				Attending the Registrar to get same signed ..	0	6	8
				Paid stamp	0	2	6
				Copy and service thereof on defendant's solicitors	0	5	0
0	1	8		The like on Messrs. D. & Co.	0	5	0
				Drawing summons for leave to plead several matters	0	5	0
				Attending the Registrar to get same signed ..	0	6	8
				Paid stamp	0	5	0
				Drawing and two copies abstract of pleas ..	0	5	0
				Copy and service on defendant's solicitors ..	0	5	0
				The like on Messrs. D. & Co.	0	5	0
				Copy abstract for the Judge	0	1	0
				Attending nominating special jury	0	13	4
				Copy list of 48	0	5	0
				Attending summons for time to plead, order made	0	6	8
				The like to plead several matters, order made	0	6	8
				Attending Registrar for order for time to plead	0	6	8
				Paid stamp	0	2	6

£	s.	d.	1867.		£	s.	d.
			May 2.	Copy and service on defendant's solicitors ..	0	5	0
				The like on Messrs. D. & Co... ..	0	5	0
				Three fair copies pleas, one to file and the others to deliver, together folios 18 ..	0	6	0
				The like particulars of case, 10 folios each, together 30 folios	0	10	0
				Attending Registrar for order to plead several matters	0	6	8
				Paid	0	2	6
				Copy and service on defendant's solicitors ..	0	5	0
				The like on Messrs. D. & Co... ..	0	5	0
				Attending delivering pleas at defendant's solicitors and Messrs. D. & Co.. ..	0	10	0
0	10	0		The like particulars	0	10	0
				Attending at the Registry filing pleas ..	0	6	8
0	6	8		Paid stamp thereon	0	5	0
				Attending Registrar filing particulars, and paid stamp	0	11	8
0	10	0		Demand of replication and service	0	10	0
			15.	Having been served with replication perusing and abstracting same, 5 folios	0	1	8
0	1	8	18.	Drawing summons for plaintiff to be at liberty to add to the record	0	5	0
				Attending the Registrar to get same signed..	0	6	8
				Paid stamp	0	2	6
				Copy and service on defendant's solicitors ..	0	5	0
				The like on Messrs. D. & Co... ..	0	5	0
				Attending summons, order made	0	6	8
				Attending Registrar for order	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
0	13	4		Drawing and two fair copies additional issue, folios 20	1	6	8
0	3	4		Attending delivering same to defendant's solicitors and Messrs. D. & Co.	0	13	4
0	8	0		Drawing questions on additional pleadings for the jury	1	0	0
				Fee to counsel to peruse and settle	1	3	6
				Attending him	0	3	4
0	3	0		Fair copy as settled for the Registrar.. ..	0	5	8
			21.	Attending at office of Registrar with same ..	0	6	8
				Paid stamp on settling same	0	10	0
				Attending Registrar on his settling same ..	0	6	8
0	6	0		Two copies thereof for service.. ..	0	11	4
0	1	8		Attending defendant's solicitors delivering same	0	6	8
0	1	8		The like to Messrs. D. & Co.	0	6	8
0	1	8		Engrossing questions for the jury to file ..	0	5	8
				Paid parchment.. ..	0	2	6
				Term fee	0	15	0
<i>Trinity Term.</i>							
			June 11.	Engrossing additional record	0	10	0
				Parchment	0	5	0
				Attending lodging additional record	0	6	8
				Paid stamp	0	5	0
0	6	8		Attending filing questions for the jury ..	0	6	8
				Paid stamp	0	2	6

APPENDIX IV.—EXAMPLES OF BILLS OF COSTS.

£	s.	d.	1867.		£	s.	d.
			June 11.	Attending setting cause down for trial ..	0	6	8
				Paid stamp	0	1	0
				Service of notice thereof on defendant's solicitors	0	5	0
				The like on Messrs. D. & Co.	0	5	0
				Attending at the Registry bespeaking office copy of the proceedings	0	6	8
				Paid for same and collating	0	7	6
0	6	8		Attending for and obtaining same	0	6	8
0	8	0		Copy to keep, 24 folios.	0	8	0
				Attending filing office copy	0	6	8
				Paid stamp thereon	0	2	6
			20.	Having received notice from Registry to attend at			
				when Judge appointed the 24th July for cause to be in paper	0	6	8
1	2	0		Instructions for case to advise on evidence, drawing same	2	2	0
8	4	0		Fair copy case and pleadings, together folios 492	8	4	0
				Fee to Mr. N. I. with case and clerk.	11	0	0
				Attending him	0	13	4
				Attending appointing conference thereon	0	6	8
				Conference fee to him and clerk	1	6	0
				Attending conference, discussing at great length the various points of the case, when Mr. I. requested to be furnished with copies of correspondence relative to settlement, security deed and deed poll, engaged nearly four hours	1	1	0
				Attending Mr. I. with copies of correspondence and appointing further conference	0	6	8
				Conference fee to him and clerk	1	6	0
				Attending further conference, engaged very long time	0	13	4
			July 11.	Drawing and engrossing two subpoenas ad test. and precipe	0	10	0
0	6	8		Attending at Registry and procuring same to be entered and sealed	0	13	4
				Paid stamps thereon	0	5	0
				Instructions for brief, including examination and perusal of a number of documents and journey to			
				very many persons relative to and in connection with the various wills and documents, thirty-one witnesses afterwards subpoenaed	52	10	0
5	5	0		Drawing brief, folios 826	41	6	0
8	5	4		Four copies brief, with pleadings, folios 936, each	62	8	0
				The like of settlement, 4th July, 1844, folios 70, each	4	3	4
				The like of deed of security of 1st March, 1847, folios 92, each	6	2	8
				The like of deed poll of 12th November, 1862, folios 25, each	1	13	4
				The like of some of testatrix's letters, folios 78, each	5	4	0

£ s. d.	1867.		£ s. d.
	July 11.	The like of correspondence between plaintiff's and defendant's solicitors, folios 82, each ..	5 9 4
		The like as to correspondence as to security deed, and deed poll of 1862, folios 196, each	13 1 4
		The like of extracts from Mr. G.'s diary, folios 8, each	0 10 8
0 12 0		The like as to particulars of case the plaintiff intended to set up under first declaration, folios 9, each	0 12 0
0 13 4		The like, under second declaration, folios 10, each	0 13 4
		The like, as to scripts to be propounded, folios 25, each	1 13 4
		The like of Script B, being fac-simile of the draft will of Mrs. B. S., prepared by counsel under instructions from Mr. H. G., folios 62, each	4 2 8
		The like of Script C, being fac-simile copy of the fair draft will of Mrs. B. S., finally settled by counsel, folios 54, each	3 12 0
		The like of correspondence between Messrs. U. & S., and the Rev. S. X. I. and plaintiff, in relation to the settlement deed of 4th July, 1844, folios 250, each	16 13 4
		The like of Script D, being fac-simile of the engrossment of the will of Mrs. B. S., dated 8th February, 1864, folios 56, each	3 14 8
		The like of Script E, being fac-simile of the draft will of Mrs. B. S., prepared by counsel under instruction from Mr. X. O. G., folios 53, each	3 10 8
		The like of Script G, being will prepared by Mrs. B. S., folios 49, each	3 5 4
		The like of Script F, being fac-simile of the draft will of Mrs. B. S., sent by Mr. X. O. G. to Messrs. N. & M. for perusal on behalf of S. S., on the 19th February, 1864, folios 50, each	3 6 8
		Drawing analysis of the leading facts of case, folios 25	1 5 0
		Four copies for counsel	1 6 4
		Drawing analysis of correspondence, folios 12, each	0 12 0
		Four copies for counsel	0 16 0
1 6 8		Fee to Mr. D., Q.C., with brief and clerk	110 0 0
		Attending him	2 0 0
		Consultation fee to him and clerk	2 9 6
		Attending to appoint same	0 6 8
		Fee to Mr. H. G. with brief and clerk	49 10 0
		Attending him	0 13 4
		Consultation fee to him and clerk	1 3 6
		Attending to appoint same	0 6 8
		Fee to Mr. B. F. N. with brief and clerk	38 10 0
		Attending him	0 13 4
		Consultation fee to him and clerk	1 3 6
		Attending to appoint same	0 6 8
		Fee to Mr. J. N. I. with brief and clerk	27 10 0
		Attending him	0 13 4

£	s.	d.	1867.		£	s.	d.
			July 11.	Consultation fee to him and clerk	1	3	6
				Attending to appoint same	0	6	8
				Three copies subpoenas ad test. for service	0	6	0
				Service thereof on B. E.	0	5	0
				The like on F. X. K.	0	5	0
				The like on N. C.	0	5	0
				Drawing a further subpoena ad test. and pre- cipe	0	5	0
				Attending at Registry getting same entered and sealed	0	6	8
				Paid stamp and parchment	0	3	6
0	5	8		Drawing and engrossing notice to admit, folios 29	1	16	8
				The like notice to produce, folios 8	0	10	0
0	6	8		Attending defendant's solicitors therewith	0	6	8
				Four copies plaintiff's notice to admit to annex to briefs, folios 29, each	1	18	8
				The like plaintiff's notice to produce, folios 10, each	0	13	4
				Four copies defendant's notice to admit, folios 6, each	0	8	0
				The like notice to produce	0	8	0
				Instructions to reduce special jury	0	13	4
				Attending reducing same	0	6	8
				Copy list as reduced	0	2	6
				Attending defendant's solicitors exchanging and signing lists	0	6	8
0	2	0		Seventeen copies subpoenas for service	1	14	0
				Attending at serving Mr. X. M. with subpoena	0	10	0
				The like on Miss B. M.	0	5	0
				The like on S. D.	0	5	0
				The like on M. Q.	0	5	0
1	0	0	19.	Attending defendant's attorneys, giving them inspection, engaged three hours	1	1	0
				Service of subpoena on Dr. Q. T.	0	5	0
				Service of subpoena on Mr. F. M. G.	0	5	0
				The like on I. C.	0	5	0
				The like on K. T.	0	5	0
0	3	0		The like on S. U. St. B., at	0	10	0
				The like on D. X.	0	5	0
				The like on F. O.	0	5	0
				The like on K. D.	0	5	0
				The like on B. E., at	0	15	0
				The like on Mrs. D.	0	5	0
				The like on D. I.	0	5	0
				The like on T. C.	0	5	0
				The like on H. C.	0	5	0
0	3	0		Subpoena duces tecum for X. O. G.	0	8	0
				Attending at Registry with precipe, and getting subpoena signed and sealed	0	6	8
				Paid stamp and parchment	0	4	6
0	1	4		Copy for service	0	2	8
				Service thereof	0	5	0
0	3	0		Subpoena duces tecum for F. B.	0	8	0
				Attending at Registry with precipe, and getting subpoena signed and sealed	0	6	8
				Paid stamp and parchment	0	4	6

£ s. d. 1867.				£ s. d.			
0	1	4	July 19.	Copy for service	0	2	8
				Service thereof	0	5	0
0	3	0		Subpœna duces tecum for H. G.	0	8	0
				Attending at Registry with precipe, and getting subpœna signed and sealed	0	6	8
				Paid stamp and parchment	0	4	6
0	1	4		Copy for service	0	2	8
				Service thereof	0	5	0
0	3	0		Subpœna duces tecum for U. B.	0	8	0
				Attending at Registry with precipe, and getting subpœna signed and sealed	0	6	8
				Paid stamp and parchment	0	4	6
				Copy for service	0	1	4
				Service thereof	0	5	0
0	3	0		Subpœna duces tecum for D. N.	0	8	0
				Attending at Registry with precipe, and getting subpœna signed and sealed	0	6	8
				Paid stamps and parchment and copy for service	0	5	10
				Service thereof	0	5	0
				Attending inspecting defendant's documents	0	6	8
				Attending signing admissions	0	6	8
				Copy plaintiff's notice to admit for signature of defendant's solicitors	0	11	8
				Attending defendant's solicitors on their sign- ing admissions	0	6	8
0	4	0		Writing to Dr. E., Mr. K., and N. C., request- ing their attendance	0	10	6
			24.	Attending consultation at	0	13	4
				Paid for use of room	0	5	0
0	7	8		Attending at cause in paper, but not reached	1	1	0
				At request of Mr. D. attending him as to pro- posed compromise, discussing matter very fully and conferring thereon	0	6	8
				Attending plaintiff and informing him result of interview with Mr. D., and conferring thereon	0	6	8
0	7	8	25.	Attending Court, cause in paper, but not reached	1	1	0
				Attending Mr. D. again as to proposed com- promise, discussing various points raised by Dr. E., and conferring thereon	0	6	8
0	7	8	26.	Attending Court, cause in the paper, and made a remanet	1	1	0
				Term fee	0	15	0

Michaelmas Term, 1867.

Nov. 13.				Attending at cause appointed to be heard on the 6th December	0	6	8
				Subpœna ad testificandum	0	5	0
				Attending in the Registry and getting same signed and sealed	0	6	8
				Paid stamp and parchment	0	4	6
				Copy thereof for service on Mr. F. X. K. at	0	2	0
				Writing agent therewith for service	0	3	6
				Paid his charges	0	8	7
			20.	Refresher to Mr. D., Q. C., and clerk	2	4	6
				Attending him	0	6	8
2	9	6		Consultation fee to him and clerk	2	9	6
0	6	8		Attending to appoint same	0	6	8

£	s.	d.	1867.		£	s.	d.
			Nov. 20.	Refresher to Mr. H. G. and clerk	1	3	6
0	3	4		Attending him	0	6	8
				Refresher to Mr. B. F. N. and clerk	1	3	6
0	3	4		Attending him	0	6	8
1	3	6		Consultation fee and clerk	1	3	6
0	6	8		Attending to appoint same	0	6	8
				Refresher to Mr. K. N. 1. and clerk	1	3	6
0	3	4		Attending him	0	6	8
1	3	6		Consultation fee to him and clerk	1	3	6
0	6	8		Attending to appoint same	0	6	8
				Two subpoenas ad testificandum	0	10	0
0	6	8		Attending in the Registry with precipe, and getting same signed and sealed	0	13	4
				Paid stamps and parchment	0	9	0
				Twenty-one copies for service	2	2	0
				Service thereof on N. C.	0	5	0
				Writing agents at with subpoena for service on G. T. at	0	3	6
				Paid their charges	0	13	6
				Writing agents at with subpoena for service on B. E.	0	3	6
				Paid their charges	0	8	7
0	1	8	Dec. 2.	On receipt of letter from Mr. K., informing us that he would be unable through severe ill- ness to attend the trial of this cause on the 6th, preparing summons to postpone trial ..	0	5	0
				Attending the Registrar to get same signed ..	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
				Drawing affidavit in support of summons, folios 8	0	8	0
				Ingrossing	0	2	8
				Paid oath	0	1	6
0	6	8		Attending at the Registry filing same ..	0	6	8
				Paid stamp	0	2	6
				Copy for defendant's solicitors	0	2	8
				4. Attending summons at order made to postpone trial till next term, and for commission to issue for the examination of Mr. K.	0	6	8
				Attending at Registry for and obtaining order ..	0	6	8
				Paid stamp	0	2	6
				Copy and service	0	5	0
1	1	0		Attendance at and other places, and writing to several per- sons for the purpose of discovering the address of Mr. X., a material witness, when we at length ascertained he was residing at	2	2	0
			1868.				
			Jan. 2.	Writing Mr. S., in reply as to examination of Mr. K.	0	3	6
			6.	Writing Mr. X. in reply	0	3	6
			7.	On the receipt of letter from Mr. Q., attending Messrs. N. & M., and afterwards Mr. 1. as to attending at on Saturday to take examination of Mr. K., when Messrs. N. & M. promised to see Dr. U. and communicate with us	0	6	8

£ s. d. 1868.

£ s. d.

Jan. 2.	Attending Messrs. N. & M. on their informing us Dr. U. could not attend until the 20th instant, and afterwards attending Mr. I., arranging appointment accordingly, and attending Messrs. N. informing them thereof	0	6	8
	Writing Mr. Q., the commissioner, in reply ..	0	3	6
8.	Writing Mr. X. in reply	0	3	6
	Subpœna ad test.	0	5	0
	Attending in the Registry and getting same signed and sealed	0	6	8
	Paid stamp and parchment	0	4	6
	Copy for service on Mr. X.	0	2	0
2 8 10	10. Journey to .. and long conference with Mr. X. as to this matter, and serving him with copy subpœna, engaged from 7 A.M. till 1 A.M. of the 11th	3	3	0
	Paid railway fare, cab hire, and other expenses	4	5	0
	13. Writing Mr. Q. for appointment	0	3	6
	14. Service of appointment to examine Mr. K. on Messrs. N. & M.	0	5	0
	Writing Mr. K. in reply	0	3	6
	Writing Mr. Q. acknowledging receipt of appointment and in reply	0	3	6
	Attending Messrs. N. & Co., enlarging time for return of commission till the 22nd inst.	0	6	8
	Term fee.. .. .	0	15	0

Hilary Term.

	17. Writing Mr. Q. in reply	0	3	6
	Attending at .. bespeaking original will to be forwarded to .. and leaving copy ..	0	6	8
	Copy for the Registry	0	5	0
	Paid examining fees	0	2	9
	18. Writing Registrar of Probate Court requesting him to send will by	0	3	6
0 16 0	Instructions to Mr. I. to attend examination at .. on Monday	1	1	0
	Copy order for examination for him	0	2	0
	Fee to him and clerk	11	0	0
	Attending him	0	13	4
	20. Attending at .. when Mr. K. examined, engaged from 10 A.M. till 11 P.M.	3	3	0
	Paid railway fare of Mr. I. and self and expenses	3	18	0
	Two copies subpœna ad test.	0	4	0
	Copy and service subpœna on Mr. K.	0	5	0
	The like on G. T.	0	5	0
	21. Attending at Registry filing examination of Mr. K.	0	6	8
	Paid	0	3	6
0 6 8	Attending at Registry bespeaking office copy examination	0	6	8
	29. Attending at Probate Court at .. cause appointed for 26th February	0	6	8
0 3 6	Writing informing you thereof	0	3	6
0 6 8	Attending at Registry Office for and obtaining office copy, examination of Mr. K.	0	6	8
	Paid	0	9	0

B.

T T

£	s.	d.	1868.		£	s.	d.
			Feb. 3.	{ Writing Mr. K. informing him cause ap-			
0	4	0		{ pointed to be heard on the 26th	0	3	6
				{ The like to Mr. X.	0	3	6
				{ The like to G. T.	0	3	6
			10.	Copy and service subpoena on N. C. ..	0	5	0
			21.	Subpœna ad testificandum	0	5	0
				Attending in the Registry and getting same			
				signed and sealed	0	6	8
				Paid stamp and parchment	0	4	6
				Copy for service on B. E.	0	2	0
				Writing Messrs. L. with same for service ..	0	3	6
			22.	Subpœna ad testificandum	0	5	0
				Attending in the Registry and getting same			
				signed and sealed	0	6	8
				Paid stamp and parchment	0	4	6
				Nineteen copies for service	1	18	0
				Subpœnas duces tecum for X. O. G. ..	0	5	0
				Attending in the Registry and getting same			
				signed and sealed	0	6	8
				Paid stamp and parchment	0	4	6
				Copy for service	0	2	0
				Service thereof	0	5	0
				Writing G. T. with post-office order for £1 ..	0	3	6
				Writing Mr. X. with post-office order for £2	0	3	6
				Drawing proofs of Mr. X., G. T., U. T. and			
				X. T., folios 20, and observations	2	0	0
0	2	8		Four copies for counsel	1	6	8
				Do. of observations	1	6	8
				Four copies examination of Mr. K. for counsel,			
				folios 20, each	1	6	8
				Attending plaintiff as to a proposed pre-			
				liminary consultation with Mr. B. F. N. and			
				Mr. K. N. I. on certain points likely to			
				arise in the event of a compromise being			
				again proposed, discussing same very fully,			
				and conferring thereon, when he requested			
				us to appoint same	0	6	8
				Attending Mr. B. F. N., appointing consulta-			
				tion accordingly	0	6	8
				Fee to him and clerk	2	9	6
0	3	4		Attending Mr. K. N. I., appointing consulta-			
				tion	0	6	8
				Fee to him and clerk	1	3	6
				Attending consultation	0	13	4
				Refresher to Mr. D., Q.C.	11	0	0
				Attending him	0	13	4
				Consultation fee to him and clerk	2	9	6
				Attending to appoint same	0	6	8
				Refresher to Mr. H. G. and clerk	5	10	0
				Attending him	0	13	4
				Consultation fee and clerk	1	3	6
0	3	4		Attending to appoint same	0	6	8
2	2	0		Refresher to Mr. B. F. N. and clerk ..	5	10	0
0	6	8		Attending him	0	13	4
				Consultation fee to him and clerk	1	3	6
0	3	4		Attending to appoint same	0	6	8
2	2	0		Refresher to Mr. N. I. and clerk	5	10	0
0	6	8		Attending him	0	13	4

£ s. d. 1868.				£ s. d.
	Feb. 22.	Consultation fee and clerk .. ..	..	1 3 6
0 3 4		Attending to appoint same .. ..	..	0 6 8
		Subpœna duces tecum for H. G. .. ..	..	0 5 0
		Attending in the Registry and getting same signed and sealed .. ..	..	0 6 8
		Paid stamp and parchment .. ..	..	0 4 6
		Copy for service .. ..	..	0 2 0
		Service thereof .. ..	..	0 5 0
		Service of subpœna ad test. on F. M. G. ..	..	0 5 0
0 2 0		The like on I. C. .. ..	..	0 5 0
		The like on X. M. at .. ..	..	0 10 0
		The like on M. Q. at .. ..	..	0 5 0
		The like on B. M. at .. ..	..	0 5 0
0 2 0	24.	Attending consultation .. ..	..	0 13 4
		Copy and service subpœna ad test. on S. D. at .. ..	..	0 10 0
		The like on H. C. .. ..	..	0 5 0
		The like on K. D. .. ..	..	0 5 0
		The like on Mrs. D. .. ..	..	0 5 0
		The like on D. X. .. ..	..	0 5 0
		The like on F. O. .. ..	..	0 5 0
		The like on K. T. .. ..	..	0 5 0
		The like on Q. T. .. ..	..	0 5 0
		The like on U. T. .. ..	..	0 5 0
		The like on D. I. .. ..	..	0 5 0
		The like on X. T. .. ..	..	0 5 0
0 3 0		The like on T. C. .. ..	..	0 5 0
		The like on S. U. St. B. at .. ..	..	0 10 0
		The like on N. C. .. ..	..	0 5 0
		Subpœna duces tecum for U. B. .. ..	..	0 5 0
		Attending in the Registry and getting same signed and sealed .. ..	..	0 6 8
		Paid stamp and parchment .. ..	..	0 4 6
		Copy for service .. ..	..	0 2 0
		Service thereof .. ..	..	0 5 0
		Subpœna duces tecum for F. B. .. ..	..	0 5 0
		Attending in the Registry and getting same signed and sealed .. ..	..	0 6 8
		Paid stamp and parchment .. ..	..	0 4 6
		Copy for service .. ..	..	0 2 0
		Service thereof .. ..	..	0 5 0
		Subpœna duces tecum for D. N. .. ..	..	0 5 0
0 7 8	26.	Attending in the Registry and getting same signed and sealed .. ..	..	0 6 8
		Paid stamp and parchment .. ..	..	0 4 6
		Copy for service .. ..	..	0 2 0
		Service thereof .. ..	..	0 5 0
0 7 8	26.	Attending Court, cause in paper but not called on .. ..	..	1 1 0
		Clerk's attendance .. ..	..	0 10 6
		On receipt of letter from Mr. D. enclosing proposed terms of compromise and request- ing to see us thereon, attending him accord- ingly, discussing same and conferring thereon .. ..	..	0 6 8
0 7 8	27.	Attending Court, cause in paper but not called on .. ..	..	1 1 0
		Clerk's attendance .. ..	..	0 10 6

T T 2

£	s.	d.	1868.	£	s.	d.
			Feb. 27. Attending plaintiff as to terms proposed, discussing same very fully and conferring thereon	0	6	8
0	7	8	28. Attending Court, cause not in the paper, and attendances on witnesses requesting them not to attend till further notice	1	1	0
			Clerk's attendance	0	10	6
			Attending searching cause list and ascertained cause in list for to-morrow	0	6	8
			Writing twenty-six witnesses requesting them to attend to-morrow	2	1	0
			29. Attending Court, cause called on, but in consequence of only five special jurymen being in attendance, his lordship adjourned the cause to Thursday next and ordered the jury to be resummoned	1	1	0
			Clerk's attendance	0	10	6
			March 4. On receipt of letter from Mr. D. enclosing proposal from Dr. E. and requesting our attendance at attending at accordingly, discussing terms very fully, and conferring thereon, engaged nearly three hours	1	1	0
			Attending plaintiff as to proposed terms and conferring thereon	0	6	8
			Attending Mr. N. as to certain points arising on proposed terms of compromise, discussing same very fully and conferring thereon, engaged long time	0	13	4
			Attending searching cause list	0	6	8
			Writing twenty-six witnesses requesting them to attend at to-morrow at eleven	2	1	0
			5. Attending plaintiff, Mr. D., Mr. G., Mr. N. and Mr. I. on terms of compromise and conferring thereon	0	13	4
			Attending Court, cause called on, and after Dr. E. had addressed the jury, terms arranged, the will of 11th February, 1864, admitted to probate, engaged the whole day. Plaintiff's costs to be taxed as between solicitor and client	2	2	0
0	10	6	Clerk's attendance	1	1	0
			Tern fee	0	15	0
			<i>Easter and Trinity Terms.</i>			
3	3	0	Very many attendances on plaintiff and on defendant's solicitors relative to proof of will and on various points arising in the matter, discussing same very fully and conferring thereon	3	3	0

Paid witnesses as follows:—

F. X. K. of	solicitor, three days at	
at	and one day before examiner	
.. .. .	.. .. .	12 10 0
B. E., of	physician, eight days	31 4 0
N. C., of	domestic servant, seven days	5 0 0

APPENDIX IV.—EXAMPLES OF BILLS OF COSTS.

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£	s.	d.	1868.		£	s.	d.
				Mar. 4. G. T., of			
				servant, five days	5	0	0
				K. D., of			
				lodging-house keeper, seven			
				days	3	10	0
				Mrs. D., of	0	10	0
				X. O. G., of	7	7	0
				solicitor, seven days	7	7	0
				H. G., of	7	7	0
				solicitor, seven days	3	13	6
				F. M. G., of			
				solicitor's clerk, seven days			
				X. M., of			
				chief clerk in her Majesty's			
				Stationery Department, seven days	5	5	0
				B. M., of	3	10	0
				seven days	7	7	0
				H. C., of	1	1	0
				physician, seven days	1	1	0
				K. T., of	1	1	0
				physician	7	7	0
				Q. T., of	7	7	0
				physician	7	7	0
6	6	0		U. B., of			
				chemist, seven days			
				D. N., of			
				solicitor, seven days			
				F. B., of			
				matron of			
				Society, seven			
				days	3	10	0
				X. X., of			
				inspector of agencies to an in-			
				surance company, seven days	11	7	0
				S. U. B., of	5	5	0
				seven days			
				I. C., of			
				summoning officer at police			
				court, seven days	1	15	0
				S. D., of	2	12	6
				nurse, seven days	2	12	6
				M. Q., of	3	12	6
				nurse, seven days			
				D. I., of			
				commercial traveller, seven days			
				F. O., of			
				matron to			
				Hospital, seven			
				days	3	10	0
				B. E., of	1	1	0
				one day	2	12	6
				D. X., of	0	5	0
				nurse, seven days	1	0	0
				T. C., of	0	12	0
				nurse			
				U. T., of			
				police serjeant, four days			
				X. T., of			
				police constable, four days			
				Writing Mr. K. Q., the commissioner appointed			
				to take the evidence of Mr. F. X. K., with			
				cheque for 5 <i>l.</i> 5 <i>s.</i> , amount of his fees	0	3	6
				Paid	5	5	0
				Paid cab hire, ushers, and expeoses of wit-			
				nesses, eight days	10	10	0
2	12	6		Plaintiff's attendance, seven days	3	13	6
				Attending at Registry paying hearing fees	0	6	8
				Paid	1	0	0
				Drawing and engrossing affidavit of increase,			
				folios 55	1	15	0
				Paid oath	0	1	6
				Copy for defendant's solicitors	0	11	8
				Attending at Registry filing affidavit	0	6	8
				Paid	0	2	6
0	5	0		Drawing bill of costs and copy, folios 125	6	10	0
0	1	8		Copy for defendant's solicitors	2	3	4
0	6	8		Attending for appointment to tax	0	6	8
				Paid Mr. U., shorthand writer	2	2	0
				Paid taxing	6	5	0
				Attending taxing	3	3	0
4	4	0		Attendances, letters, messengers, postages, &c.			
				in the above business and not otherwise			
				charged	10	10	0
				Term fee	0	15	0

THE PLAINTIFF'S BILL OF COSTS.

(TO BE TAXED AND PAID PURSUANT TO DECREE DATED 1871).

In Her Majesty's Court of Probate.

H——— *v.* S——— and others.

£	s.	d.	Hilary Term, 1871.	£	s.	d.
			Jan. 5. Instructions for citation calling in probate ..	0	6	8
			Drawing same, fo. 10	0	10	0
			Copy for Registrar	0	3	4
			Attending leaving same for settlement ..	0	6	8
			Attending searching for original grant to S. & D.	0	6	8
			Paid	0	1	0
			Attending searching for subsequent grant to Mrs. S.	0	6	8
			Paid	0	1	0
0	6	8	10. Attending Mr. E. and Mr. O., conferring as to their joining in proceedings, and Mr. E. was to obtain execution of necessary documents	0	6	8
0	8	0	Drawing renunciation by father of right to guardianship, he being an executor of the will, fo. 8	0	8	0
0	2	8	Engrossing	0	2	8
0	8	0	Drawing election by minors of guardian, fo. 8	0	8	0
0	2	8	Engrossing	0	2	8
0	6	8	Attending Mr. E., handing him same and conferring thereon, and he was to get same executed	0	6	8
0	13	4	Attending Mr. E., conferring as to circumstances connected with execution of Mr. H.'s will	0	13	4
0	13	4	Attending Messrs. O. & E., conferring as to interview with Mr. T., and as to proceedings being instituted in Mr. E.'s son's name ..	0	13	4
0	6	8	Instructions to advise as to proceedings and evidence	0	6	8
2	17	0	21. Drawing instructions for counsel to advise, fo. 77	3	17	0
1	5	8	Copy for counsel	1	5	8
			Fee to Dr. T. therewith and clerk	3	5	6
			Attending him	0	6	8
0	5	0	23. Writing Mr. I. long and special letter as to intended proceedings, and suggesting division of property by way of compromise ..	0	5	0
0	5	0	27. Writing Mr. I. long letter that it was intended to take proceedings to dispute will, and as to terms of compromise	0	5	0
0	3	6	Perusing opinion of Dr. T.—writing Mr. I. for reply	0	3	6

£ s. d. 1871.			£ s. d.	
0	13	4 Jan. 27.	Attending Mr. O., conferring thereon, and it was determined to continue proceedings, and Mr. O. was to communicate with the E.'s ..	0 13 4
0	13	4	Attending Mr. O., when he stated that Mr. E. refused to join in the proceedings, and gave instructions to apply for leave to issue citation on his affidavit	0 13 4
0	6	8	26. Instructions for case for motion to issue citation on affidavit by Mr. O.	0 6 8
0	6	0	Drawing same, fo. 12	0 12 0
0	6	0	Copy for the Court	0 4 0
			Instructions for affidavit in support	0 6 8
			Drawing same, fo. 11	0 11 0
			Engrossing	0 3 8
			Writing agent to have same sworn	0 3 6
			Paid his charges, 6s. 8d., 2s. 6d., 3s. 6d. ..	0 12 8
			Paid filing	0 2 6
			Attending thereon	0 6 8
0	6	8	Attending depositing case for motion	0 6 8
			Paid	0 1 0
0	10	0	27. Drawing observations for brief on motion, fo. 10	0 10 0
0	3	8	Brief copy of same, and case and affidavit, fo. 32	0 10 8
			Copy power of attorney for counsel, fo. 18 ..	0 6 0
			Fee to Dr. T. and clerk with brief	2 4 6
			Attending him	0 6 8
			31. Attending Court, order made for leave to issue citation upon filing letter containing authority	0 13 4
			Instructions for affidavit by Mr. O. as to receipt of letter	0 6 8
			Drawing same, fo. 5	0 5 0
			Engrossing	0 1 8
			Endorsing exhibit	0 1 0
			Writing agent to get same sworn	0 3 6
			Paid his charges, 6s. 8d., 3s. 6d., 3s. 6d. ..	0 13 8
0	6	8	Instructions for affidavit to lead citation ..	0 6 8
			Drawing same, fo. 5	0 5 0
			Engrossing	0 1 8
			Writing agent to get same sworn	0 12 8
			Paid his charges	
0	5	0	Writing Mr. I. very long letter in reply as to form of proceedings, and in explanation of suggestion for avoiding litigation	0 5 0
0	6	8	Attending Mr. U. H. E. as to evidence offered by him, and perusing his statement	0 6 8
0	6	8	Feb. 3. Attending Registrar at with affidavit and letter and bespeaking order ..	0 6 8
			Paid filing same	0 5 0
0	1	6	Attending thereon	0 6 8
0	1	6	Attending for office-copy order	0 6 8
0	1	6	Paid	0 2 6
0	6	8	Fee to Serjeant C. with retainer	1 3 6
			Attending him	0 6 8
0	3	4	Fee to Dr. T., Q. C., with retainer and clerk ..	1 3 6
0	3	4	Attending him	0 6 8
1	3	6	Fee to Mr. Q. with retainer	1 3 6

APPENDIX IV.--EXAMPLES OF BILLS OF COSTS.

£	s.	d.	1871.	£	s.	d.
0	6	8	Feb. 3. Attending him	0	6	8
0	6	8	4. Attending in Registry, finally settling draft citation	0	6	8
			Paid fees on settling	0	3	0
0	2	0	Engrossing citation, fo. 6	0	5	0
			Parchment	0	2	6
			Attending filing affidavit to lead citation ..	0	6	8
			Paid	0	2	6
			Attending entering caveat and issuing citation	0	6	8
			Paid entering caveat	0	1	0
			Issuing citation, fee paid	0	5	0
0	4	0	Three copies citation for service, fo. 6 each ..	0	10	0
			Writing Mr. I., arranging as to serving his clients at his office, and in reply as to Mr. O.'s authority to commence proceedings ..	0	3	6
			6. Service on Mr. T.	0	5	0
			Certificate	0	2	6
			Service on Mr. E.	0	5	0
			Certificate	0	2	6
			7. Service on Mr. and Mrs. S.	0	5	0
			Certificate	0	2	6
0	3	6	9. Writing Mr. I. that as proceedings had been commenced the rents of the two freehold houses could no longer be allowed to be received by Mr. and Mrs. S., and suggesting an arrangement to avoid a receiver ..	0	3	6
0	3	6	Writing Mr. T. with notice that if he and his co-trustee allowed Mr. S. to continue receiving rents of freeholds they would be held personally liable	0	3	6
			18. Attending in Registry, searching for appearance, and found one entered for Mrs. S. ..	0	6	8
			Paid	0	1	0
0	1	0	Abstracting	0	1	0
0	3	6	22. Writing Mr. I. in reply as to further proceedings, and that it rested with him to deliver declaration	0	3	6
0	5	4	Mar. 6. Perusing declaration	0	6	8
			Instructions for pleas	0	6	8
			Drawing same and copy	1	0	0
			Fee to Mr. Q. to settle same	1	3	6
0	3	4	Attending him	0	6	8
0	10	0	Drawing instructions for him and copy	0	10	0
0	1	6	9. Fee to Mr. Q. for conference on case and to settle pleas	0	1	6
0	6	8	Attending him	0	6	8
0	13	4	Attending conference	0	13	4
0	3	6	10. Writing Mr. I., inquiring whether he had filed affidavit of scripts	0	3	6
			20. Attending filing pleas	0	6	8
0	1	4	Copy to serve	0	2	4
0	1	8	Attending serving	0	6	8
			Instructions for affidavit as to scripts ..	0	6	8
			Drawing same, fo. 5	0	5	0
			Engrossing	0	1	8
			Attending swearing and paid	0	8	2
			Paid filing	0	2	6

£	s.	d.	1871.		£	s.	d.
			Mar. 20.	Attending thereon	0	6	8
			21.	Attending summons for leave for defendants to serve issue and move for directions as to mode of trial, no order made	0	6	8
			22.	Writing Mr. I. for co-defendant's affidavit of scripts filed by him	0	3	6
0	4	0		Perusing same	0	5	0
				Perusing and abstracting replication	0	5	0
				Perusing and abstracting the issue	0	3	4
0	1	4	Apr. 13.	Instructions for brief on motion as to mode of trial	0	6	8
0	1	4		Drawing and copy brief, fo. 16	1	1	4
0	1	0		Perusing and abstracting notice	0	1	0
0	1	0		Notice to annex	0	2	0
				Fee to Dr. T. therewith and clerk	2	4	6
				Attending him	0	6	8
				Term fee	0	15	0

Easter Term, 1871.

			Apr. 18.	Attending Court, order made for trial before the Court itself	0	13	4
0	13	4	May 5.	Attending Mr. O. on several occasions, conferring as to sufficiency of evidence and advising and arranging that Mr. Q. should be consulted	0	13	4
1	6	0		Fee to Mr. Q. for conference upon evidence and clerk	1	6	0
0	6	8		Attending him	0	6	8
0	13	4		Attending conference	0	13	4
0	6	8	8.	Attending Mr. O., conferring as to evidence already obtained, and as to advisability of postponing trial until I. H. could be present, which he objected to	0	6	8
0	5	0	9.	Preparing 3 subpoenas for witnesses	0	15	0
0	6	8		Attending sealing	0	13	4
0	2	6		Paid	0	7	6
				Copy and service on Mrs. T.	0	4	6
				The like on Mr. X. I. E.	0	4	6
				The like on U. H. E.	0	4	6
				The like on K. K. E.	0	4	6
				The like on Mrs. N.	0	4	6
				The like on Mr. K.	0	4	6
				Attending searching in Registry to ascertain probable date of trial	0	6	8
1	6	0	12.	Fee to Mr. Q. for conference on evidence and clerk	1	6	0
0	6	8		Attending him	0	6	8
0	13	4		Attending conference when he advised that it would not be proper to have the cause heard in the absence of the plaintiff, and he advised that an application should be made to have it postponed	0	13	4
0	3	6		Writing Mr. I. in reply that notwithstanding Mr. O's letter to him, we considered ourselves as acting for the plaintiff	0	3	6
0	3	0	19.	Perusing notices to inspect and admit documents	0	5	0
				Attending signing admission	0	6	8

£ s. d. 1871.				£ s. d.		
1	6	0	May 19. Fee to Mr. Q. for conference upon further evidence of witnesses, and as to postponement of hearing and clerk	1	6	0
0	6	8	Attending him	0	6	8
0	13	4	Attending conference, and he advised that evidence was sufficient to justify abandonment of application to postpone	0	13	4
0	3	6	Writing Mr. I. that application was abandoned	0	3	6
26	5	0	20. Instructions for brief on hearing	31	10	0
6	13	0	Drawing same and evidence, fo. 298	14	18	0
8	6	0	Three copies thereof for counsel	14	18	0
2	12	0	Two copies shorthand notes of evidence of defendant S. on trial of H. v. U., fo. 52 each	2	12	0
0	6	0	Three copies of power of attorney, fo. 18 each	0	18	0
			Fee to Serjeant C. with brief	55	0	0
1	7	8	Attending him	2	2	0
			Fee to him for consultation and clerk	2	9	6
			Attending him	0	6	8
			Fee to Dr. T. with brief and clerk	33	0	0
2	2	0	Attending him	2	2	0
2	9	6	Fee to him for consultation and clerk	2	9	6
0	6	8	Attending him	0	6	8
			Fee to Mr. Q. with brief	27	10	0
0	7	8	Attending him	1	1	0
			Fee to him for consultation and clerk	1	3	6
0	3	4	Attending him	0	6	8
			Attending consultation	0	13	4
			Term fee	0	15	0

Trinity Term, 1871.

May 25.		Attendance in Registry ascertaining probable time of trial				0	6	8	
0	16	0	Four copies further statement of Mr. K., fo. 12				0	16	0
3	3	0	Attending Court cause part heard (self and clerk)				5	5	0
0	6	8	Attending instructing shorthand writer ..				0	6	8
26	7	0	Three copies transcript of 1st day's evidence for counsel, fo. 527 each				26	7	0
26.		Refresher fee to Serjeant C. and clerk 2nd day				16	10	0	
		Attending him				0	13	4	
2	9	6	Consultation fee and clerk				2	9	6
0	6	8	Attending him				0	6	8
11	0	0	Refresher fee to Dr. T. and clerk				11	0	0
0	13	4	Attending him				0	13	4
2	9	6	Fee to him for consultation and clerk				2	9	6
0	6	8	Attending him				0	6	8
		Refresher fee to Mr. Q. and clerk				11	0	0	
		Attending him				0	13	4	
1	3	6	Fee to him for consultation and clerk				1	3	6
0	6	8	Attending him				0	6	8
3	3	0	Attending Court, cause heard, decree made against validity of will and condemning defendants S. in costs (self and clerk)				5	5	0
1	0	0	Paid ushers				1	0	0
0	6	8	Attending him				0	6	8
		Paid hearing fees				2	7	6	
		Attending in Registry paying same				0	6	8	

£	s.	d.	1871.		£	s.	d.
1	18	0	May 26.	Paid Mrs. T. (of) for attendance as witness	3	3	0
1	18	0		Like Mr. X. I. E. (of)	3	3	0
				Like Mr. K. (of)	4	4	0
1	18	0		Like Mr. U. H. E. (of)	3	3	0
1	18	0		Like Mr. K. K. E. (of)	3	3	0
1	18	0		Like Mrs. N. (of)	3	3	0
				Attending bespeaking office copy decree	0	6	8
0	1	0		Paid for same	0	3	6
0	6	8		Attending afterwards for and obtaining same	0	6	8
0	4	6		Copy and service	0	4	6
				Drawing costs and copy for taxation, fo. 48	2	8	0
				Copy for other side	0	16	0
				Attending filing and obtaining appointment	0	6	8
				Stamp on filing	0	2	6
				Notice of appointment	0	5	0
				Attending taxing	1	0	0
				Stamps on taxation	1	4	0
				Attending agreeing amount	0	6	8
4	4	0		Extra attendances, conferences, correspondence during suit	5	5	0
				Term fee, postage, &c... .. .	0	15	0

INDEX OF FORMS

TO BE ADOPTED IN THE

PRINCIPAL REGISTRY OF THE COURT

as nearly as the Circumstances of each Case will allow.

(P. R., NON-C.)

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